United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

APPELLANT'S BRIEF AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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For the
District of Columbia Circuit
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Clerk

No. 14,177

EUGENE CORRAO,

Appellant

v.

966

CATHERINE GUNZBOURG-GURNEY
and
MAXIM J. GURNEY,

Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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QUESTIONS PRESENTED

1. Are oral declarations by a decedent allegedly made several weeks after the execution of a Will admissible in evidence to support or destroy the validity of the Will?

2. Did the United States District Court for the District of Columbia err in refusing to instruct the jury as requested by the appellant that there is a presumption of law that a Will has been executed in accordance with the requirements of law, and in the absence of clear and satisfactory evidence produced by the contestants of the instrument to the contrary the attack upon the Will must fail.

3. Did the United States District Court for the District of Columbia err in refusing to instruct the jury as requested by appellant that the burden of proving by a preponderance of the evidence that the Will of Paul M. Gunzbourg, deceased, was not executed in accordance with the requirements of law of the District of Columbia rested upon the contestants of the Will.

4. Whether the United States District Court for the District of Columbia erred in refusing to grant appellant Eugene Corrao's Petition for the Appointment of a Collector for the Estate of Paul M. Gunzbourg pending the outcome of appellate review.

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APPEAL FROM THE UNITED STATES DISTRICT COURT
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BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal from an Order of the United States District Court for the District of Columbia entered on the 19th day of July, 1957 denying probate to the Last Will and Testament of Paul M. Gunzbourg, deceased, bearing date the day of 1953; and also from an Order of the United States District Court for the District of Columbia entered on the 19th day of July, 1957, for appointment of a collector for the Estate of Paul M. Gunzbourg,

deceased, pending the outcome of the appeal.

The appellant, Eugene Corrao, is named and nominated as the executor in the Last Will and Testament of Paul M. Gunzbourg, deceased, bearing date the day of 1953.

STATEMENT OF THE CASE

Paul M. Gunzbourg departed this life on the 30th day of May, 1954, in the District of Columbia. At the time of his death, Paul M. Gunzbourg was domiciled in the District of Columbia. Among his possessions and effects three copies of a Last Will and Testament were found, bearing date the day of 1953. In this Last Will and Testament, Eugene Corrao was named and nominated executor. The three copies of this Last Will and Testament consisted of the following: one original or ribbon copy, and two carbon copies. All three copies of this Last Will and Testament were filed with the Office of the Register of Wills for the District of Columbia for Probate and Record of the United States District Court for the District of Columbia. All three copies of this Will are in the form of formal testamentary dispositions of property to take effect after death, including a formal attestation clause. All the formal characteristics of a formal Will are present. The original or ribbon copy of this Will does not bear the signature of the testator; it does, however, bear the signatures of three attesting witnesses in the attestation clause. The two carbon copies of this Will contain the signature of the decedent, Paul M. Gunzbourg, in the lower lefthand margins of pages 1 and 2. The two carbon copies of this Will contain corrections for the misspelling of a proper name on page 1 and to supply the omission of the designation of the City of Leningrad on page 2. In the margins by the corrections appears the signature of the decedent. In the attestation clause of both of these two carbon copies of the Will the signatures of three attesting witnesses appear.

In examining the possessions and effects of Paul M. Gunzbourg, deceased, two other instruments in the nature of a testamentary disposition of the decedent's estate were found: one such instrument was dated the 11th day of February, 1943 and the other such instrument was dated the 8th day of June, 1951. Both of these instruments likewise were filed with the Office of the Register of Wills for the District of Columbia for Probate and Record of the United States District Court for the District of Columbia.

For purposes of brevity and clarity, the Last Will and Testament of Paul M. Gunzbourg, deceased, bearing date the day of , 1953, will be referred to hereinafter throughout this brief as the 1953 Will.

The 1953 Will specifically revokes all other Wills and Codicils and by specific designation to dates expressly revokes the instruments in the nature of a testamentary disposition of property executed on the 11th day of February, 1943, and on the 8th day of June, 1951.

Appellant, Eugene Corrao, as the named and nominated executor in the 1953 Will, petitioned the United States District Court for the District of Columbia for probate of the 1953 Will and for Letters Testamentary. Thereafter, Catherine Gunzbourg-Gurney, a sister-in-law of the decedent, and the nominated executrix in the instrument in the nature of a testamentary disposition of property dated the 8th day of June, 1951, filed a Caveat to the 1953 Will, and petitioned the United States District Court for the District of Columbia for probate of the Will bearing date the 8th day of June, 1951, and for Letters Testamentary. Subsequently, Maxim Gurney, a nephew by blood of the decedent, Paul M. Gunzbourg, filed a Caveat to the 1953 Will and also to the 1951 Will, and petitioned the United States District Court for the District of Columbia for Letters of Administration upon the ground that none of the three instruments in the nature of testamentary dispositions of property were effective as a Will to dispose of decedent's property; and that in fact the decedent departed this life intestate.

Appellant, Eugene Corrao, in examining the personal papers of the decedent in December, 1956, discovered a paper writing in the nature of a testamentary disposition of property, executed by Paul M. Gunzbourg, deceased, showing as the date of execution the day of February, 1952. Across the face of page 1 of this instrument appears the following inscription: "superseded by a new testament."

This instrument was immediately filed with the Office of the Register of Wills for the District of Columbia for Probate and Record of the United States District Court for the District of Columbia. Thereafter, pleadings were amended by all parties to take into account the discovery of this additional instrument.

Issues were framed for trial before a jury dealing solely and exclusively with respect to the question whether the 1953Will was executed in accordance with the requirements of the laws of the District of Columbia. There was no issue involved in this contest with respect to whether the decedent, Paul M. Gunzbourg, possessed the requisite mental competency to execute a valid will at the time of the execution by him of the 1953 Will. In like manner, there was no issue in this contest that undue influence, coercion or duress had been exercised upon the testator in the execution of the 1953 Will, or that the execution of the 1953 Will was obtained by fraud. The issue whether the execution of the 1953 Will was accomplished in accordance with the requirements of the laws of the District of Columbia was tried before a jury in June, 1956. The jury's verdict was against the 1953 Will, and judgment was entered thereon. Subsequently Appellant, Eugene Corrao, filed a Motion To Set Aside The Verdict of the Jury and For Judgment; appellant also filed a Petition for the Appointment of a Collector for the Estate of Paul M. Gunzbourg, deceased, pending the outcome of appellate review. The United States District Court for the District of Columbia denied the Motion To Set Aside The Verdict of the Jury and For Judgment. The Petition for Letters of Collection likewise was denied by the Court.

STATUTES INVOLVED

The statutes involved in this appeal are Title 19, Section 103, and Title 20, Section 401, District of Columbia Code, 1951 Edition. The pertinent provisions of Title 19, Section 103, insofar as this case is concerned, read as follows:

> "All Wills and Testaments shall be in writing and signed by the testator, or by some other person in his presence and by his express directions, and shall be attested and subscribed in the presence of the said testator by at least two creditable witnesses or else they shall be utterly void and of no effect;. . . ."

The pertinent provisions of Title 20, Section 401, insofar as this case is concerned, reads as follows:

> "Letters ad colligendum may be granted to one or more persons in case of a contest with relation to a Will . . . ."

STATEMENT OF POINTS

The questions for judicial determination presented to this Honorable Court are:

1. Whether the United States District Court for the District of Columbia erred over objections of appellant's counsel in permitting two witnesses to testify with respect to oral declarations allegedly made by Paul M. Gunzbourg, deceased, several weeks after the execution of the 1953 Will, relating to the execution of the 1953 Will.

2. Whether the United States District Court for the District of Columbia erred in refusing to grant appellant's instruction that the law presumes a Will has been executed in accordance with the requirements of law until the contrary is shown by clear and satisfactory evidence produced by the contestants of the Will, and unless such contrary evidence is produced, the attack upon the Will by the Caveators must fail.

3. Whether the United States District Court for the District of Columbia erred in refusing to grant appellant's instruction that the caveators of the Will carried the burden of proving by a preponderance of the evidence that the Will of Paul M. Gunzbourg was not executed in accordance with the requirements of the laws of the District of Columbia.

4. Whether the United States District Court for the District of Columbia erred in refusing to grant Appellant Eugene Corrao's Petition for the Appointment of a Collector for the Estate of Paul M. Gunzbourg, pending the outcome of appellate review.

SUMMARY OF ARGUMENT

This Court is called upon to review action of the trial court with respect to four questions: (a) Whether oral declarations allegedly made by a decedent several weeks subsequent to the execution of his Will are admissible in evidence in a contest attacking the validity of his Will; (b) whether the appearance on the face of the Will of execution of the instrument in accordance with all the formal requirements of the laws of the District of Columbia with respect to the execution and attestation of Wills creates a prima facie case of due execution of the Will; (c) whether caveators of a will alleging that the Will under attack was not executed in accordance with the laws of the District of Columbia are required to prove by a preponderance of the evidence that allegation; and (d) whether the trial court erred in refusing to appoint a collector for the estate of the decedent pending appellate review by this Court.

More than 60 years ago the question whether oral declarations allegedly made by a decedent prior to or subsequent to the execution of his Will are admissible in evidence was resolved by the Supreme Court of the United States. Throckmorton v. Holt, 21 Sup.Ct. 474; 180 U.S. 552. The case arose in the District of Columbia. Over objections of the caveatees the trial court permitted the caveators to introduce into evidence oral declarations allegedly made by the decedent, Judge Holt,

subsequent to the execution of his Will. The facts of the case are extraordinary in character. On appeal to this Court, the trial court's action was affirmed. Throckmorton v. Holt, 12 App.D.C. 552; 36 Wash. Law Reporter 323. However, careful reading of the decision of this Court seems to lead inescapably to the conclusion that the result reached by this Court was attended with great difficulty. Reflective reading of the decision creates the definite impression that the ruling of the case was influenced by the extraordinary character of the facts involved in the case, and that the ruling of this Court is probably limited to the extraordinary facts of that case, and that the ruling was not intended as a rule of general application.

The case was appealed to the Supreme Court of the United States. After an exhaustive collection and study of cases arising in the various states, and in England, dealing with the questions of oral declarations of a decedent prior and subsequent to the execution of his Will, the Supreme Court of the United States reversed. Mr. Justice Peckham stated that the declarations of a decedent whether made prior or subsequent to the execution of a Will are pure hearsay and inadmissible as evidence.

Seven years later the Supreme Court of the United States had occasion to review its ruling in the Throckmorton v. Holt case, and reaffirmed the ruling in that case. Lipphard v. Humphrey, 28 Sup.Ct. 561; 209 U.S. 264.

The appearance on the face of a Will of the genuine signature of the testator, the appearance of the signatures of the requisite number of competent witnesses to the will in the attestation clause, and the undisputed testimony that the testator requested the witnesses to sign the instrument as witnesses, that the witnesses signed the instrument in the presence of the testator, and that the testator declared the instrument to the witnesses to be his Will, gives rise to a prima facie case of due execution of the Will. In the absence of clear and satisfactory evidence to the contrary, any attack upon the validity of the Will

must fail. This court, in Betts v. Lonas, 84 U.S. App. D.C. 206; 172 F. (2) 759, held that "the appearance, on the face, of regularity should be regarded as involving a presumption of due execution so strong as to prevail, in the absence of clear and satisfactory evidence to the contrary." (Emphasis supplied), Betts v. Lonas, 172 F.(2), 759, 760.

Appellant requested the trial court to instruct the jury that in the face of failure of the caveators to show by clear and satisfactory evidence that the 1953 Will of Paul M. Gunzbourg, deceased, was not executed in accordance with the laws of the District of Columbia, the attack upon the will must fail. Appellant respectfully submits that the trial court's refusal to instruct the jury as thus requested by the appellant constitutes reversible error.

The principle of law that the party alleging a state of facts carries the burden of proving the allegation by a preponderance of the evidence is so firmly and deeply rooted in our law as to require no citation of authority. Caveators alleged in their answer to Appellant's Petition for Probate that the 1953 Will of Paul M. Gunzbourg, deceased, was not executed in accordance with the laws of the District of Columbia. Appellant requested the trial court to instruct the jury that the burden of showing wherein the testator failed to comply with the requirements of the laws of the District of Columbia must be established by the caveators by a preponderance of the evidence. Appellant respectfully submits that the trial court's refusal to instruct the jury as requested by the appellant constitutes reversible error.

The laws of the District of Columbia provide for the appointment of a collector for the estate of a decedent where there is a contest with respect to the Will of the decedent. Title 20, Section 401, District of Columbia Code, 1951 Edition. Following the outcome of the trial before a jury, in order to preserve the status of the parties without change, and in order to collect the assets of the decedent's estate, appellant petitioned the trial court to appoint a collector pending the result of

appellate review by this Court. Whenever contests have appeared with respect to the estates of decedents, the trial court generally has followed the practice to appoint a collector. In the case of In Re The Personal Estate of Caroline Easton, Deceased, 23 Wash. Law Reptr., 789, 793, Judge Hagner of the Supreme Court of the District of Columbia (now the United States District Court for the District of Columbia) in construing an informal letter alleged to be testamentary in character, which was denied probate, said: "Until I learn whether an appeal is to be taken from this decision by either party, I will not make an appointment, as in the event of an appeal it may be necessary to appoint a collector." (Emphasis supplied)

Appellant respectfully urges that the trial court's action in refusing to appoint a collector pending appeal constituted reversible error.

ARGUMENT

There are before this Honorable Court on this appeal four questions of law to be resolved. Three of these questions deal with episodes during the course of the trial and the trial court's rulings which appellant urges are erroneous. The fourth question relates to action taken by appellant after the trial to preserve the status quo of all parties pending appellate review, and the trial court's ruling upon that action which appellant urges was erroneous.

Over objections of appellant's counsel, the trial court permitted two witnesses to testify, respecting certain oral declarations allegedly made by the decedent, Paul M. Gunzbourg, several weeks after the signing and attestation of the 1953 Will concerning the execution of the 1953 Will. Thus, the first question for appellate review is presented, namely: whether oral declarations allegedly made by a decedent several weeks after the execution of a Will are admissible in evidence to support or destroy the validity of the Will.

No principle of law is more firmly and more deeply rooted in the corpus of our law, and supported by more compelling and sounder reasons than the presumption of law that a Will showing on its face compliance with statutory requirements shall be presumed to have been executed in conformity with the formal requirements of law, and in the absence of clear and satisfactory evidence to the contrary an attack upon the validity of the Will must fail.

In logical compliment to this principle of law is the further principle of law that the party attacking the validity of the Will carries the burden of establishing by a preponderance of the evidence that the Will fails to meet the requirements of the law. From the trial court's refusal to grant appellant's instructions embodying these two fundamental and complimentary principles of our law arise the second and third questions for appellate review in this case.

After the trial in order to maintain the status quo of all parties to the proceedings pending appellate review, and, yet at the same time, to permit the collection of the assets of the estate, appellant petitioned the United States District Court for the District of Columbia for the appointment of a collector. Denial of appellant's petition for the appointment of a collector presents the fourth question for appellate review.

I. ORAL DECLARATIONS OF DECEDENT NOT ADMISSIBLE IN EVIDENCE

At the trial, over objections of counsel for the appellant, the United States District Court for the District of Columbia permitted two witnesses, namely: Alexander Mark Saitzoff, and Natalie Saitzoff, his wife, to testify that several weeks following the execution of the 1953 Will, the decedent, Paul M. Gunzbourg, in a conversation in the Russian language, made certain oral declarations to them with respect to the execution of the 1953 Will. The witnesses to whom these alleged oral declarations were made testified that the occasion on which these alleged

oral declarations were made occurred not more than one month before the death of Paul M. Gunzbourg. (J.A. 88) The death of Paul M. Gunzbourg occurred on the 30th day of May 1954. The 1953 Will was executed and attested in February 1954.

Over objections by appellant's counsel (J.A. 90), the trial court permitted Alexander Mark Saitzoff to testify on direct examination for the caveators as follows: (J.A. 90, 91)

Q. Mr. Saitzoff, I repeat my question to make sure we all have in mind the same question.

I asked you whether or not during the weeks preceding Mr. Gunzbourg's death and during the period of any visit that you had with him at his home, whether at any time during that period he ever mentioned a will to you.

A. Yes, sir.

Q. Who was present when that conversation occurred?

A. Mrs. Pahud and my wife.

Q. And tell us just what was said by Mr. Gunzbourg at that time.

A. We were chatting with Mr. Gunzbourg --

Q. You were what?

A. We were chatting, talking with him, and at a certain moment the question of his will was raised, -- I could not recall under what circumstances -- but Mrs. Pahud offered to give him the will to sign and he told her, "No, I will sign it tomorrow," and then he turned around to my wife and to myself and continued the conversation in Russian as we usually talked with him, and he said, "I am not quite decided yet. I want to think it over."

Q. He said that to you?

A. He said that to both my wife and myself.

Q. In Russian?

A. In Russian.

Q To the best of your recollection, when did that conversation take place?

A I will say between three weeks and one month before his death. I recollect that that was the time before the last that I paid a visit to him, and, as I used to pay him a visit every 10 or 15 days, I would say that that happened not more than a month before his death.

Q That would place the time at about the end of April of 1954?

A That is what I would think.

Q All right, sir.

Was there any other conversation that you ever had with him that he mentioned his will?

A Yes, from time to time he used to raise the subject. I was very closely connected with him but I tried to avoid talking about his personal matters but he occasionally showed some excitement about the decision he would have to make. I always considered Mr. Gunzbourg to be a highly honorable man.

THE COURT: That is not responsive.

THE WITNESS: I am sorry.

THE COURT: There is no question pending.

BY MR. BRYLAWSKI:

Q What I asked you, if you can tell me, was whether you recall anything that he said at any other time regarding his will and, first, if you can, say when those declarations were made to you.

A I couldn't fix a date, sir, but on various occasions he would mention that he had to decide how, what arrangements to make in connection with his will and he used to put up some of his ideas. He would say, "I have to decide what I am going to do with my antique objects," because he used to particularly like those objects and he used to talk about being completely fair in dividing his estate but he never mentioned any decisions that he made. He was just discussing it in a broad sense.

In like manner, Natalie Saitzoff, wife of Alexander Saitzoff, over objection of appellant's counsel, (J.A. 94) was permitted to testify as follows: (Tr. of Rec., pages 83 and 84)

BY MR. BRYLAWSKI:

Q Did you have a conversation with the decedent shortly before his death?

A Yes.

Q Can you recall when that was?

A Three to four weeks before his death, the beginning of May.

THE COURT: Keep your voice up, Mrs. Saitzoff.

THE WITNESS: I will try my best.

BY MR. BRYLAWSKI:

Q Three or four weeks before his death?

A Yes.

Q Where did the conversation take place?

A In his home.

Q Who was there?

A My husband and I, Madame Pahud and Mr. Gunzbourg.

Q At that time, did he make any reference to a will, to the subject of having a will or not having a will?

A Yes.

MR. AULETTE: I would like for the record to note an objection again, as before.

THE COURT: Overruled. This will be received as bearing on intent.

MR. AULETTE: Yes.

BY MR. BRYLAWSKI:

Q You said there was such a conversation, did you not?

A I did.

Q Tell us, to the best of your recollection, what he said at that time.

A I will try my best. We were talking about a will and Madame Pahud offered, told him, "Would you like me to bring it over and you can

sign it right here," and he said, "I will think it over and bring it tomorrow."

Q Was anything further said at that time?

A He told to my husband and to me that he wanted to think it over. We talked French with Madame Pahud and we talked Russian with him and he said it in Russian.

The attention of the Court is respectfully invited to the testimony of Alexander Mark Saitzoff, and Natalie Saitzoff, his wife, shown in the foregoing reproductions of their testimony, stating that at the time these alleged oral declarations were made by the decedent, Paul M. Gunzbourg, Adrienne Pahud was present. In fact, their testimony states that Adrienne Pahud offered to bring the 1953 Will to the decedent for the purposes of having him sign it. (J.A. 91-94) Addrienne Pahud was decedent's housekeeper. In view of the statements attributed to Adrienne Pahud by the witnesses Alexander Mark Saitzoff, and Natalie Saitzoff, his wife, counsel for the appellant called Adrienne Pahud as a rebuttal witness. Adrienne Pahud emphatically and without equivocation denied that she had offered to bring the 1953 Will to the decedent, Paul M. Gunzbourg, for signature as attributed to her by the witnesses, Alexander Mark Saitzoff, and Natalie Saitzoff, his wife. On rebuttal direct examination Adrienne Pahud testified as follows: (J.A. 95)

THE COURT: You may proceed, Mr. Aulette.

MR. AULETTE: May it please the Court, I would like at this time to call as a rebuttal witness Mrs. Pahud.

THE COURT: She has already been sworn and the interpreter has been shown.

Thereupon--

ADRIENNE PAHUD,

previously sworn, was recalled as a witness in rebuttal.

DIRECT EXAMINATION

BY MR. AULETTE:

Q Mrs. Pahud, directing your attention to approximately one month prior to the death of Paul M. Gunzbourg, do you recall a visit in his home at which you were present by Mr. and Mrs. Saitzoff?

A I remember the occasion often, but whether they came a week before the death or not, I can't remember.

Q Mrs. Pahud, in their presence at any time then, did you say to Mr. Gunzbourg, "Would you like me to bring it" -- meaning the will -- "over and you can sign it right here," and he replied, "I will think it over and bring it tomorrow"?

A No.

Q Are you very sure of that?

A I am very sure of that. We never spoke about a will with Mr. and Mrs. Saitzoff.

MR. AULETTE: That is all I have.

On rebuttal cross examination by counsel for the caveators, Adrienne Pahud was equally emphatic that no conversations of the character attributed to her by the witnesses Alexander Mark Saitzoff and Natalie Saitzoff, his wife, that in their presence, Adrienne Pahud had offered to bring the 1953 Will to the decedent Paul M. Gunzbourg, for his signature ever took place. (J.A. 95-96)

Any person, sui juris, possesses the right and liberty to dispose of his estate after death in whatsoever manner he may choose, and his testamentary disposition in this regard should be respected. In the absence of mental incompetency, fraud, duress, coercion, and undue influence, the paper writing, in which the testamentary disposition of the decedent is expressed, when executed in accordance with the formal requirements of the law, is the only testamentary disposition that the law will recognize and effectuate, and offers the only reliable and trustworthy source to know what the decedent's wishes were with respect to the disposition of his property after death. It does not lie within the

province of the court or the jury to determine that the testator's property should be disposed in a manner different than the testator himself indicated in his Will.

Declarations allegedly made by a decedent, whether written or oral, and whether made prior or subsequent to the execution of the Will, unless made so near to the time of the execution of the Will as to become a part of the res gestae, are not admissible in evidence, either to control the construction of the Will, or to support or destroy the validity of the Will. Such declarations are hearsay and nothing more.

Nearly sixty years ago, this Court had occasion to struggle with the problem of the admissibility into evidence of oral declarations made by a decedent subsequent to the execution of his Will to indicate the decedent's intention. Throckmorton v. Holt, 12 App. D.C. 552, 36 Wash Law Reptr. 323. At the trial of that case before a jury, caveators called several witnesses who were permitted by the trial judge to testify concerning alleged oral declarations made by the decedent, Judge Holt, to them at various times subsequent to the execution of his Will. Exceptions to the trial judge's ruling admitting these oral declarations into evidence were noted by counsel for the proponents of Judge Holt's Will. The jury returned a verdict against the Will.

On appellate review by this Court the ruling of the trial court in admitting the alleged oral declarations of Judge Holt was affirmed. Throckmorton v. Holt, 12 App.D.C. 552, 36 Wash. Law Reporter. 323. The facts in this case are extraordinary in character and a careful and reflective reading of this Court's opinion appears to lead inescapably to the conclusion that the decision was reached with great difficulty and under the influence of the extraordinary character of the facts involved in the case with respect to the unexplained strange and mysterious appearance of Judge Holt's Will, in part mutilated, about one year after the death of Judge Holt. Moreover, it appears strongly probable that this Court, in handing down its opinion, intended the ruling in that

decision to be limited to the extraordinary facts of that case, and not as a rule of law of general application, for this Court said: "Nor would the same evidence (referring to the oral declarations allegedly made by Judge Holt subsequent to the execution of his Will) be of sufficient weight to warrant the overthrow of a formal will produced and with execution proved by living witnesses of unimpeached credibility." (Emphasis supplied) Throckmorton v. Holt, 12 App. D.C. 552, 36 Washington Law Reporter, 323, 327.

The case was appealed to the Supreme Court of the United States. Throckmorton v. Holt, 21 Sup. Ct. 474;180 U.S. 552. After exhaustive collection and study of the decisions from the various states and from England dealing with the question of the admissibility of oral declarations allegedly made by a decedent whether prior or subsequent to the execution of his Will, the Supreme Court of the United States reversed with instructions to grant a new trial. Other grounds for reversal also appear in the Court's opinion which have no bearing on this case.

Mr. Justice Peckham delivering the opinion of the Court, after noting that the decisions on this subject in the various cases were not in accord, and after noting that the principle of excluding the oral declarations allegedly made by a decedent with regard to his Will was favored by Chancellor Kent, and also by Justices Washington, Story, Livingston, and Thompson, all of whom once occupied seats on the Supreme Court of the United States, Throckmorton v. Holt, 21 Sup. Ct. 474, 482, said:

> "After much reflection upon the subject, we are inclined to the opinion that not only is the weight of authority with the cases which exclude the evidence both before and after the execution, but the principles upon which our law of evidence is founded necessitate that exclusion. The declarations are purely hearsay, being merely unsworn declarations and when no part of the res gestae are not within any of the recognized exceptions admitting evidence of that kind." (Emphasis supplied) Throckmorton v. Holt, 21 Sup. Ct. 474, 482.

After reviewing the decisions in the class of cases favoring admission into evidence of the oral declarations of a decedent with respect to his Will, and after noting that this class of cases proceeds upon the theory that the declarations may be true and are made by a person who knows all about the subject, and they are, therefore, proper to be submitted to the jury for what that body may regard their worth, Throckmorton v. Holt, 21 Sup. Ct. 474, 484. Mr. Justice Peckham continues:

> "We are, however, convinced that the true rule excludes evidence of the kind we are considering. We remain of the opinion that the declarations come within no exception to the law excluding hearsay evidence upon the trial of an action, and we think the exceptions should not be enlarged to admit the evidence." Throckmorton v. Holt, 21 Sup. Ct. 474, 484.

Continuing with the opinion of the Court, Mr. Justice Peckham states:

> "We think that more injustice is possible as a result of admitting the evidence than from its exclusion. The statutes of all the states have very careful and stringent provisions in relation to the making of wills and the due proof of their execution. The wills must be in writing (with the exception of certain nuncupative wills) signed by the testator and witnessed by others; and to permit evidence of the nature given in this case tends, as we think, most strongly to break down the efficiency of the statutory provisions, and to render proof of the execution of wills much less certain than was contemplated by the statutes. If declarations of the deceased were admissible to attack, they would then of course be admissible to sustain, the will, and there would be apt to arise a contest in regard to the number and character of conflicting declarations of the deceased which he could neither deny nor explain and in the course of which contest great opportunities for fraud and perjury would exist. The statutes as to wills were passed, as we believe, for the very purpose of shutting out all contests of such a character." Throckmorton v. Holt, 21 Sup. Ct. 474, 485.

In the course of his opinion, Mr. Justice Peckham quoted with approval from the opinion of Mr. Justice Washington, saying:

> "In Den ex dem Stevens v. Vancleve, 4 Wash. C.C. 262, 265, Fed. Cas. No. 13,412, Mr. Justice Washington said that declarations of the deceased, prior or subsequent to the execution of the will, were nothing more than hearsay, and there was nothing more dangerous than their admission, either to control the construction of the instrument or to support or destroy its validity. Judge Pennington concurred in those views."

Seven years after the decision in the Throckmorton v. Holt case, the Supreme Court of the United States had occasion to review the decision with respect to the admissibility into evidence of oral declarations made by a decedent prior or subsequent to the execution of his Will. The result was affirmation of its ruling in the Throckmorton v. Holt decision. The case is that of Lipphad v. Humphrey, 28 Sup. Ct. 561; 209 U.S. 264. In this case the caveators, in attacking the decedent's Will, sought to introduce through witnesses oral declarations allegedly made by the decedent prior and subsequent to the execution of the Will. Over objections by the caveatees the evidence was excluded by the trial court. On appeal to this Court, the position of the trial court in excluding the proffered evidence was affirmed. Lipphard v. Humphrey, 28 App. D.C. 355.

Mr. Chief Justice Fuller, delivering the opinion of the Supreme Court of the United States quoted with approval and at length from the Throckmorton v. Holt case, 21 Sup.Ct. 474; 180 U.S. 552, in affirming the decision of this Court, and of the trial court in excluding the oral declarations allegedly made by the decedent, Loraine Lipphard. Lipphard v. Humphrey, 28 Sup.Ct. 561, 564.

II. TESTATOR'S SIGNATURE ON WILL RAISES PRIMA FACIE CASE OF DUE EXECUTION

A presumption of law arises in favor of the due execution of a Will upon proof of the genuineness of the testator's signature and the signatures of the requisite number of witnesses; particularly when the

will contains an attestation clause reciting observance of all the statutory requirements in the execution of wills. Of course, like any other presumption of law, this presumption is rebuttable. However, the rebutting evidence must be of a competent character.

Insofar as is material in this case with respect to the execution of wills, the Code of Laws of the District of Columbia provides as follows:

> "All Wills and Testaments shall be in writing and signed by the testator, or by some other person in his presence and by his express directions, and shall be attested and subscribed in the presence of the said testator by at least two creditable witnesses, or else they shall be utterly void and of no effect; . . . ." Title 19, Section 103, District of Columbia Code, 1951 Edition.

Appellant, Eugene Corrao, introduced in evidence the 1953 Will of Paul M. Gunzbourg, deceased. As has been indicated heretofore in the section on Statement of the Case, three copies of a Will of Paul M. Gunzbourg, deceased, were found among his possessions and personal effects -- an original or ribbon copy, and two carbon copies. All three copies of this Will are in the form of formal testamentary dispositions of property to take effect after death, including a formal attestation clause. All the formal characteristics of a formal Will are present. The original or ribbon copy of this Will does not bear the signature of the testator; it does however, bear the signatures of the three attesting witnesses in the attestation clause. The two carbon copies of this Will contain the signature of the decedent, Paul M. Gunzbourg, in the lower left hand margins of pages 1 and 2.

The genuineness of the testator's signature was proved by competent uncontradicted testimony. (J.A. 70-72). Moreover, the caveators of the 1953 Will stipulated that the signature appearing in the lower left hand margins of pages 1 and 2 of the 1953 Will was the genuine signature of the decedent, Paul M. Gunzbourg. (J.A. 82)

There is uncontradicted evidence in the record of the proceedings before the trial court sitting with a jury that the decedent, Paul M. Gunzbourg, declared the 1953 Will to be his Will, before three competent witnesses, that he requested them to sign the 1953 Will as attesting witnesses, that each one of the three witnesses did affix his or her signature to the 1953 Will as attesting witnesses, and that the signing was done in the presence of the testator. Two of the witnesses, Adrienne Pahud and Claude Badoux, testified that about the middle of February, 1954, the decedent requested them to witness his Will, and that he declared in their presence that the paper writing they were witnessing was his Will. (J.A. 67-70, 80-82) The third attesting witness to the 1953 Will, Catherine Gunzbourg-Gurney, a sister-in-law of the testator, and one of the caveators of the 1953 Will, also testified that in January, 1954, the decedent, Paul M. Gunzbourg, requested her to subscribe and attest the 1953 Will, and that the decedent declared to Catherine Gunzbourg-Gurney that the instrument she had signed was his Will. (J.A. 86) Upon further questioning, by the Court, Mrs. Catherine Gunzbourg-Gurney again stated that she had signed the 1953 Will at the request of the decedent, Paul M. Gunzbourg, and that the decedent declared the instrument to be his Will. (J.A. 87)

The undisputed testimony establishes beyond the remotest question of doubt that the signature of the decedent at the lower left hand margins of pages 1 and 2 of the two carbon copies of the 1953 Will is the genuine signature of the testator, Paul M. Gunzbourg. The undisputed testimony also establishes beyond the remotest question of doubt that the 1953 Will was subscribed and attested by three competent witnesses at the request of the testator and in his presence, and that the testator declared the 1953 Will to be his Will.

Under the laws of the District of Columbia, there is no requirement that a will to be valid must be signed at the end thereof, or that it must be signed in any particular page or place of the will. It is sufficient under the laws of the District of Columbia that the testator's signature appears somewhere in the instrument. This rule of law is so firmly established in the District of Columbia that the citation of authority is superfluous.

Examination of the 1953 Will reveals that all the usual and formal characteristics of a formal will are present, including the usual and characteristic introductory language of formal wills, the usual and characteristic language disposing of property to take effect after death, the nomination of an executor, and a formal attestation clause. Examination of the 1953 Will also reveals that the attesting witnesses affixed their signatures in the appropriate place in the attestation clause.

All the formal requirements of the laws of the District of Columbia with respect to the execution and attestation of wills are present on the face of the 1953 Will. Appearance on the face of the Will of the genuine signature of the testator, admitted to be the genuine signature of the testator by the caveators, and the signatures of the requisite number of attesting witnesses, and the undisputed testimony of all the attesting witnesses that the testator requested them to sign the instrument as witnesses, that they affixed their signatures to the instrument in the presence of the testator, and that the testator declared the instrument to them to be his Will, gives rise to a prima facie case of due execution of the Will.

In 1948 in Betts v. Lonas, 84 U.S. App. D.C. 206; 172 F (2) 759, 760, this Court declared:

> "The appearance, on the face, of regularity should be regarded as involving a presumption of due execution so strong as to prevail, in the absence of clear and satisfactory evidence to the contrary." (Emphasis supplied)

Appellant through counsel requested the trial court to instruct the jury that the appearance of the testator's signature at the bottom margin of pages 1 and 2 of the 1953 Will raised a prima facie case of due execution of the Will, and for the caveators to prevail in this contest clear and satisfactory evidence to the contrary must appear. The instruction requested by appellant through counsel reads as follows:

> "You are instructed as a matter of law that there is a presumption of law that a Will has been executed in accordance with the requirements of law. You are further instructed that the appearance of decedent's signature at the bottom margin of pages 1 and 2 of exhibits 1 a and 1 b establishes a prima facie case of decedent's intention to place his name there to effectuate his will. Thus, in the absence of clear and satisfactory evidence produced by the opponents of the 1953 Will that Paul M. Gunzbourg when he placed his signature at the bottom margin of pages 1 and 2 of exhibits 1a and 1b did not intend such signature to effectuate his Will, your verdict will be in favor of the 1953 Will."

The trial Court refused to grant appellant's instruction. Appellant respectfully submits that the trial court's action constitutes error.

III. PARTY ALLEGING FACTS CARRIES BURDEN OF PROOF

It is such elementary law that the party alleging the existence of a state of facts carries the burden of proving by a preponderance of competent evidence the facts alleged as to make it unnecessary and superfluous to cite authorities.

To be sure the burden of proving the due execution of the 1953 Will of Paul M. Gunzbourg rested upon the proponents of the Will. Appellant produced at the trial before a jury a written document bearing all the formal characteristics of a testamentary disposition of property to take effect after death. The document carried the undisputed and admitted true genuine signature of the testator at the lower left hand margins of page 1 and page 2, the document carried the signatures of three competent witnesses in the body of the formal attestation clause, the

testimony is undisputed that the testator requested the witnesses to sign the document, that the witnesses did affix their respective signatures in the presence of the testator, and that the testator declared the instrument to be his Will. All the formalities of the laws of the District of Columbia with respect to the execution and attestation of Wills were fulfilled. Accordingly, a prima facie case of the due execution of the 1953 Will of Paul M. Gunzbourg was established.

The caveators alleged that the affixing of his signature by Paul M. Gunzbourg, deceased, at the lower left hand margins of pages 1 and 2 of the 1953 Will was not placed there by the decedent, Paul M. Gunzbourg, with the intention of effectuating his Will. The burden of proving the allegation by a preponderance of competent evidence rested upon the caveators. Applying the rule established in this jurisdiction by the case of Betts v. Lonas, 84 U.S. App. D.C. 206; 172 F.(2) 759, the caveators in sustaining the burden of proof resting upon them had the obligation of proving the allegation that the 1953 Will of Paul M. Gunzbourg was not executed in accordance with the laws of the District of Columbia, not merely by some evidence, but by clear and satisfactory evidence. Examination of the transcript of record reveals that with the exception of the hearsay evidence admitted into evidence by the trial court given by Alexander Mark Saitzoff and Natalie Saitzoff, his wife, there is not the slightest scintilla of evidence directed to the allegation made by the caveators that the decedent, Paul M. Gunzbourg, did not intend to effectuate his Will when he placed his signature in the lower left hand margins on pages 1 and 2 of the 1953 Will.

Appellant requested the trial court to instruct the jury as follows:

> "You are instructed as a matter of law that the burden of proving by a fair preponderance of the evidence that when Paul M. Gunzbourg placed his signature at the bottom margin of pages 1 and 2 of Exhibits 1a and 1b he did not do so with intention of effectuating his will is upon the opponents of the 1953 Will."

Appellant respectfully submits that the trial court's refusal to grant appellant's instruction constituted reversible error.

IV. COLLECTOR FOR THE ESTATE SHOULD HAVE BEEN APPOINTED

Insofar as pertinent here the Code of Laws of the District of Columbia provide as follows:

> "Letters ad colligendum may be granted to one or more persons in case of a contest with relation to a will." Title 20, Section 401, District of Columbia Code, 1951 Edition.

Following the conclusion of the trial, appellant petitioned the trial court, in order to preserve the status of the parties without change, and in order to collect the assets of the estate, to appoint a collector pending the results on appeal before this Court. Appellant's petition was denied. Instead the trial court, over objections of the appellant, permitted the qualification of an executrix under a 1952 Will.

The trial Court generally has appointed collectors in cases where there is a contest over the Will. Judge Hagener of the Supreme Court of the District of Columbia, (now the United States District Court for the District of Columbia) in construing an informal letter alleged to be testamentary in character, which was denied probate; said:

> "Until I learn whether an appeal is to be taken from this decision by either party I will not make an appointment, as in the event of an appeal, it may be necessary to appoint a collector." In Re Personal Estate of Caroline Easton, 23 Wash. Law Reptr. 789, 793. See also notes 2 and 3, Section 451, pages 221, and 222, Mersh Probate Practice, Second Edition.

An administrator or executor ordinarily has power to collect and distribute. See Note, to 148 A. L. R. 280, Power to Distribute. A collector has power to collect and preserve only -- See 148 A. L. R. 280.

Upon perfecting the appeal in this case, jurisdiction over the case is thereby transferred to this Court immediately. It therefore seems quite anomalous and improper to have the trial court dealing with the estate while the appeal is pending.

Appellant respectfully represents and submits that the trial court's refusal to appoint a collector for the Estate of Paul M. Gunzbourg, deceased, pending the appeal, is reversible error.

CONCLUSION

It is respectfully submitted and urged that in applying the law, as heretofore set forth in this brief, to the facts of the case at bar, the trial court committed reversible error: (a) in admitting into evidence the oral declarations allegedly made by the decedent, Paul M. Gunzbourg, many weeks after the execution of his Will, (b) in denying the appellant's instructions to the jury heretofore set forth, and (c) in denying appellant's petition for the appointment of a collector for the Estate of Paul M. Gunzbourg, deceased, pending appellate review by this Court.

Respectfully submitted,

AULETTE, DAVIS, OGDEN,
LEONARD & CERVERA.

By CHARLES L. AULETTE
and
JAMES A. DAVIS, SR.

1145 Nineteenth Street, N. W.
Washington 6, D. C.

Attorneys for Appellant

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JOINT APPENDIX

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142 [Filed June 30, 1954 - Theodore Cogswell, Register of Wills, D. C. Clerk of Probate Court]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Probate Court

IN RE:	)	Administration No. 85608
Estate of	)	Doc. 179
Paul M. Gunzbourg	)	Eugene Corrao
Deceased	)	353 Grove Street
	)	Brooklyn 37, New York
	)	Petitioner

PETITION FOR PROBATE OF WILL AND
FOR LETTERS TESTAMENTARY

The petition of Eugene Corrao respectfully represents to this Honorable Court as follows:

1. Petitioner is an adult citizen of the United States, and a resident of Brooklyn, New York, and he files this petition as executor nominated in the Last Will and Testament of Paul M. Gunzbourg, deceased.

2. Paul M. Gunzbourg, deceased, was late an adult citizen of the United States, and at the time of his death and for many years prior thereto was domiciled in the District of Columbia. He departed this life in the District of Columbia on the 30th day of May 1954.

3. Decedent left a Last Will and Testament executed during the year 1953, with the month and day left blank, in which petitioner is nominated executor. The said Last Will and Testament left by the decedent consists of one original copy and two carbon copies, all of which are

143 now on file in the Office of the Register of Wills for the District of Columbia for probate and record. The original copy of the said Last Will and Testament is not signed by the testator, though it is signed by three (3) attesting witnesses. The two carbon copies of the said Will and Testament both show the same corrections in the testator's own handwriting on pages one and two and also show his signature in the lower left hand

corner margins of pages one and two. Petitioner respectfully avers and will prove by the testimony of the attesting witnesses that the testator intended, by his signature on pages one and two of the carbon copies of the said Last Will and Testament,to subscribe to the said paper writings as his last Will and Testament, and intended the said paper writings as testamentary dispositions of all his property real, personal, and mixed wherever situated.

4. Two other instruments in the nature of a testamentary dispositions of the decedent's estate have been found; one dated the 11th day of February 1943 and the other dated the 8th day of June 1951. Both of said instruments are now on file in the Office of the Register of Wills for the District of Columbia.

5. Petitioner is named by the decedent, Paul M. Gunzbourg, in his Last Will and Testament executed during the year 1953 as executor thereof. The said Last Will and Testament executed during the year 1953 specifically revokes all other Wills and Codicils and by specific designation to dates expressly revokes the instruments executed on the 11th day of February, 1943, and on the 8th day of June, 1951. The original copy of the instrument in the nature of a testamentary disposition dated the 8th day of June 1951 referred to in paragraph 4 hereof, which is now on file in the Office of the Register of Wills for the District of Columbia, shows on its face on pages 1, 3, 4, and 5 defacements and deletions. Petitioner respectfully avers and will prove by competent testimony that the decedent herein used the said instrument in preparing his Last Will and Testament executed during the year 1953, and to indicate the changes he desired to
144 make in his Last Will and Testament executed during the year 1953- all of which clearly manifests the decedent's intention to revoke the instrument dated the 8th day of June, 1951, and to execute a new Last Will and Testament. Accordingly, petitioner is advised and verily believes that he is entitled to letters testamentary with respect to the estate of Paul M. Gunzbourg, deceased, by reason of the fact that petitioner is named executor in decedent's Last Will and Testament executed during the year 1953.

6. Decedent's wife, Lydia Gunzbourg, nee Peniakoff, departed this life several years prior to the death of the decedent herein. Thus, decedent left surviving him as his only heir at law and next of kin, a nephew; namely, Maxim J. Gurney, temporarily residing in Rome, Italy, but having a permanent address at 135 W. 58th Street, New York, New York.

7. Decedent, in his Last Will and Testament executed during the year 1953, and in the two instruments in the nature of a testamentary disposition referred to in paragraph 4 hereof, named the persons listed below as legatees, to wit:

a) Last Will and Testament executed during the year 1953 -

1. Maxim J. Gurney, who is the heir at law and next of of kin recited in Paragraph 6 hereof, residing temporarily in Rome, Italy, but having a permanent residence at 135 W. 58th Street, New York, New York.

2. George Rotvand, residing at 4 rue Octave, Feuillet, Paris, France.

b) Instrument in the nature of a testamentary disposition dated the 8th day of June, 1951 -

1. Maxim J. Gurney recited in paragraphs 6 and 7 (a)(1) hereof.

145 2. George Rotvand recited in paragraph 7 (a)(2) hereof.

3. Helen Douglas in case she should survive the decedent herein. The said Helen Douglas departed this life several years ago.

4. Catherine Gunzbourg, sister-in-law of the decedent herein, residing at 135 W. 58th Street, New York, New York.

c) Instrument in the nature of testamentary disposition dated the 11th day of February 1943 -

1. George Rotvand recited in paragraph 7 (a)(2) hereof.

2. Jules Gunzbourg, decedent's brother who departed this life several years ago.

3. Helen Douglas recited in paragraph 7 (b)(3) hereof.

4. Catherine Gunzbourg recited in paragraph 7 (b)(4) hereof.

5. Maxim Gurney recited in paragraph 6 and 7 (a)(1) hereof.

6. Eugenie Gunzbourg, decedent's mother who departed this life several years ago.

8. To petitioner's best information and knowledge decedent left no real estate nor any interest in real estate in the District of Columbia or elsewhere in the United States. Upon information and belief relying upon the Fourth Paragraph of decedent's Last Will and Testament executed during the year 1953, decedent left real estate situated in Russia.

146 9. At the time of his death decedent left personal property in the District of Columbia, in New York, New York, and in London, England, estimated at approximately twenty thousand dollars ($20,000.00), consisting of money on deposit in decedent's account in the Chase National Bank in New York, New York and in the National Capital Bank of Washington, D.C., securities in New York, New York and in London, England, jewelry, antique furniture, and paintings.

10. To petitioner's best information and knowledge decedent left debts, including funeral expenses and expenses connected with decedent's last illness, amounting to approximately three thousand five hundred dollars ($3,500.00).

WHEREFORE, the premises considered, petitioner respectfully prays:

1. That the Last Will and Testament executed during the year 1953 be admitted to probate and record as the Last Will and Testament of the said Paul M. Gunzbourg, deceased, as to both real estate and personal property.

2. That citation may issue against such of the heirs at law and next of kin who do not waive citation and file their consents, and that notice by publication or other substituted process may issue directed to any of them who may be returned "Not to be found".

3. That letters testamentary issue to petitioner, Eugene Corrao, as executor named in decedent's Last Will and Testament executed during the year 1953, and that petitioner be permitted to qualify as executor by giving a nominal undertaking with surety approved by this Honorable

Court in an amount sufficient to secure the payment of the debts of the estate.

147 4. For such other and further relief as the nature of the case may require and to this Honorable Court shall appear just and proper.

/s/ Eugene Corrao
Petitioner

/s/ Charles L. Aulette
Attorney for Petitioner
Munsey Building
Washington 4, D. C.

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148 COUNTY OF NEW YORK)
) SS:
STATE OF NEW YORK)

Eugene Corrao, of Brooklyn, New York, being first duly sworn on oath according to law deposes and says that he has read the foregoing petition by him subscribed, that he knows the contents thereof, and that the matters and things therein stated are true of his own knowledge except as to matters and things therein stated to be alleged upon information and belief, and that as to those matters and things he verily believes them to be true.

/s/ Eugene Corrao

[I personally guarantee the payment of costs amounting to $15.00 - /s/ Charles L. Aulette, Atty.]

[JURAT]

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149 [Filed March 17, 1955]

ANSWER AND OBJECTIONS TO PETITION FOR PROBATE AND CROSS PETITION FOR PROBATE OF JUNE 8, 1951, WILL

ANSWER TO PETITION FOR PROBATE

In answer to the petition for probate filed herein on June 30, 1954, by Eugene Corrao, Catherine Gunzbourg-Gurney respectfully states:

1. That she is a citizen of the United States and a resident of the State of New York of adult age, that she is the person who was named by the above named decedent, Paul M. Gunzbourg, as executrix of his last will and testament dated June 8, 1951, and that she is a beneficiary under that will.

2. That her interests will be materially injured by the admission to probate of the document offered by Eugene Corrao and that she objects to its admission and probate on the following grounds which appear from the record herein:

A. The said document bearing no date but apparently prepared in 1953 is not the last will and testament of the decedent, was not intended to have been executed by him as such, and was not executed by him either in fact nor in the manner required by the District of Columbia law.

B. The attesting witnesses to the said alleged Will did not sign in each others' presence, nor on the same date, and did not witness any signing or signature on the said document by the decedent.

150 C. The signature or initials of the decedent, if the said marks be such, that appear on the carbon copies of the said document were not placed thereon with the intention that they should constitute execution since:

(1) The said marks were made on the carbon copies only and were deliberately omitted from the original.

(2) The said marks were intended to indicate typographical errors only since they appear on pages one and two of the said carbon copies on which pages errors occurred and do not appear on pages three and four on which no errors apparently appeared.

(3) The last page of the said document contained a line for the decedent's signature which was deliberately left blank by him, not only on the original, but also on the copies of the said document.

(4) Decedent was aware of the necessity of signing on the line provided for his signature on the last page of the said document, as is apparent from the fact that he caused the alleged witnesses to sign on that page and at the places provided for the signatures of witnesses

immediately below the plainly marked line for his own signature, and since he was personally familiar with the usual manner in which Wills are executed inasmuch as he had previously signed and executed at least two prior testamentary documents, namely the wills of 1943 and 1951, both of which are on file herein, and both of which are properly signed and executed at the places and on the lines provided.

D. The original "ribbon" copy of the said document was not signed or marked by the decedent. That this omission was deliberate is indicated by:

(1) The fact that he was aware that this copy rather than the carbon copies would properly constitute his Will if properly executed, since it was this copy only that was signed by petitioner herein at his request, as will be explained in paragraph 3 below.

151 (2) The fact that he avoided signing, correcting, or marking this copy in any way whatsoever, even though the corrections made on the carbon copies were routine in nature and did not materially affect the testamentary disposition expressed.

3. In explanation of the appearance of this petitioner's signature on the original copy of the said document, petitioner states that she was in Washington, D.C. between January 18 and 20, 1955, and that during that period she signed the document at his request. Petitioner further states that the decedent did not state nor explain the nature of the document and that he did not request her to sign any copy other than the original. Petitioner further states that she did not see the decedent sign the original or any other copy of the document nor did she see his signature, initials, or mark on the original or any other copy of the document.

CROSS PETITION FOR PROBATE OF WILL DATED JUNE 8, 1951.

Catherine Gunzbourg-Gurney petitions the Court that the Will now on file, dated June 8, 1951, be admitted to probate as the last will and testament of Paul M. Gunzbourg and in support thereof states as follows:

1. That the said Paul M. Gunzbourg was a citizen of the United States and a resident of the District of Columbia and died on May 30, 1954. That there are now on file in the office of the Register of Wills

of the District of Columbia the following papers, purporting to be of a testamentary nature:

a. Document dated February 11, 1943

b. Document dated June 8, 1951

c. Original and two copies of a document unsigned and undated but apparently prepared in 1953.

2. That this petitioner believes the document dated June 8, 1951, to be the valid and existing last will and testament of the said Paul M.
152 Gunzbourg; that the said document effectively revoked any prior wills and specifically revoked the document of February 11, 1943; and that the 1953 document referred to in paragraph 2, c., above is not and never was the valid last will and testament of the decedent and in fact never had any testamentary value as is more fully set forth heretofore in petitioner's objections to the probate of the said document, appearing above.

3. That petitioner is the widow of the brother of the decedent and that she is the Catherine Gunzbourg who is named in the said June 8, 1951 Will as Executrix of the decedent.

4. That decedent was not survived by wife, children, or parents, and that his sole heir and next of kin is Maxim J. Gurney, 135 W 58th Street, New York City, a nephew of decedent and petitioner's son.

5. That decedent in the three papers of testamentary disposition referred to above named the following persons as legatees:

In the document dated February 11, 1943, George Rotvand, residing at 4 Rue Octave, Fueillet, Paris, France; Jules Gunzbourg, decedent's brother, also now deceased; Helen Douglas, now deceased; the said Maxim J. Gurney, and Eugenie Gunzbourg, decedent's mother, also now deceased.

In the document dated June 8, 1951, herein offered for probate, the said Maxim J. Gurney, George Rotvand, and Helen Douglas, named above and in addition Catherine Gunzbourg, Executrix and petitioner herein.

In the document unsigned and undated, but apparently prepared in 1953, the said Maxim J. Gurney and George Rotvand, and in addition

Eugene Corrao, named as Executor, residing at 353 Grove Street, Brooklyn 37, New York, and Mrs. Adrienne Pahud, 2900 Adams Mill Road, N. W., Washington, D. C.

6. Petitioner states on information and belief that the decedent left no real estate or interest in real estate in the United States or elsewhere except that, relying on paragraph THIRD of the Will offered for probate herein, decedent may have left interests in property of unknown value and extent in Russia.

153 7. Petitioner believes that decedent was possessed at the time of his death of personal property, totalling approximately Twenty Thousand Dollars ($20, 000. 00) in value, consisting of money on deposit in New York and Washington, D. C. banks, securities on deposit in New York and London, England, jewelry, antique furniture, and paintings.

8. By reference to the petition of Eugene Corrao filed herein, petitioner states on information and belief that decedent left debts, including funeral expenses, of approximately Three Thousand Five Hundred Dollars ($3, 500. 00).

WHEREFORE, the premises considered, petitioner respectfully prays:

1. That probate be denied to the purported Will drawn in the year 1953, and that Petition of Eugene Corrao for Letters of Administration under the said alleged Will be denied.

2. That the last Will and Testament dated June 8, 1951, be admitted to probate and record as the Last Will and Testament of the said Paul M. Gunzbourg, deceased, as to both real estate and personal property.

3. That citation may issue against such of the heirs at law and next of kin who do not waive citation and file their consents, and that notice by publication or other substituted process may issue directed to any of them who may be returned "Not to be found".

4. That letters testamentary issue to petitioner, Catherine Gunzbourg-Gurney, as executrix named in decedent's Last Will and Testament dated June 8, 1951, and that petitioner be permitted to qualify

as executrix by giving a nominal undertaking with surety approved by this Honorable Court in an amount sufficient to secure the payment of the debts of the estate.

154 5. For such other and further relief as the nature of the case may require and to this Honorable Court shall appear just and proper.

/s/ Catherine Gunzbourg-Gurney
Petitioner

DIAMOND & BRYLAWSKI
Attorneys for Petitioner

By /s/ Henry H. Brylawski
1030 Woodward Bldg.
Washington 5, D. C.

COUNTY OF NEW YORK)
) S S
STATE OF NEW YORK)

Catherine Gunzbourg-Gurney, of New York, New York, being first duly sworn on oath according to law deposes and says that she has read the foregoing petition by her subscribed, that she knows the contents thereof, and that the matters and things therein stated are true of her own knowledge except as to matters and things therein stated to be alleged upon information and belief, and that as to those matters and things she verily believes them to be true.

/s/ Catherine Gunzbourg-Gurney

[JURAT]

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156 [Filed June 13, 1955]

ANSWER TO ANSWER AND OBJECTIONS TO PETITION FOR PROBATE AND PETITION FOR CAVEAT TO CROSS BILL

Answer To Answer And Objections To Petition For Probate

Comes now, Eugene Corrao, the executor named in the last will and testament executed during the year 1953 by Paul M. Gunzbourg, deceased, and offered for probate and record in this Court on the 30th day of June 1954, and for answer to the Answer And Objections To The Petition For Probate filed herein by Catherine Gunzbourg-Gurney states as follows:

1. The answer and objections to the petition for probate filed herein by Catherine Gunzbourg-Gurney is in fact and in law a petition for caveat.

2. The said Catherine Gunzbourg-Gurney has no standing in this Court to contest the last will and testament of Paul M. Gunzbourg, deceased, executed by the decedent during 1953 and offered for probate and record in this Court on the 30th day of June 1954 for the reason that she has not shown nor established in the caveat, and it does not appear from the record that she has any legal or sufficient interest to contest the said
157 last will and testament of Paul M. Gunzbourg, deceased, and by such caveat to pray for denial of probate and admission to record of the said last will and testament of the decedent.

3. The said Catherine Gunzbourg-Gurney's asserted right to contest the last will and testament of the decedent executed by the decedent during 1953 arises by virtue of an alleged prior will bearing date the 8th day of June 1951. However, the said Catherine Gunzbourg-Gurney has not alleged in the caveat the due execution of the said alleged prior will, and that the said alleged prior will remained the last will and testament of the decedent until his death, except for the effect of the subsequent will, if valid, to revoke it.

4. Further answering the answer and objections to the petition for probate filed herein by the said Catherine Gunzbourg-Gurney the respondent says as follows:

(a) Answering the allegations of paragraph numbered 1 of Catherine Gunzbourg-Gurney's answer and objections to the petition for probate states:

(1) Respondent is without information or knowledge concerning the residence and citizenship of Catherine Gunzbourg-Gurney and therefore neither admits nor denies the said allegation, but if material to this proceeding demands strict proof thereof.

(2) Respondent admits that Catherine Gunzbourg-Gurney is an adult.

(3) Respondent admits that Catherine Gunzbourg-Gurney is a beneficiary under a paper writing purporting to be a last will and

testament of Paul M. Gunzbourg, deceased, bearing date the 8th day of June 1951; however, respondent avers that the said paper writing bearing date the 8th day of June 1951 was specifically and
158 deliberately revoked as a last will and testament by the said Paul M. Gunzbourg, deceased, and that the said revocation was intentional on the part of the decedent, and that the decedent intended to establish a new and different last will and testament to supercede the paper writing bearing date the 8th day of June 1951, and that the decedent carried out his intention by executing a new last will and testament in 1953.

(4) Respondent denies that Catherine Gunzbourg-Gurney is named executrix in the paper writing bearing date the 8th day of June 1951 but states the facts to be that one Catherine Gunzbourg and Maxim J. Gurney are named as co-representatives and co-trustees of the estate of Paul M. Gunzbourg in the said paper writing bearing date the 8th day of June 1951, and that the said Maxim J. Gurney has neither renounced nor been found unqualified to act.

(b) Answering the allegations of paragraph numbered two of the answer of Catherine Gunzbourg-Gurney, respondent states as follows:

(1) Respondent denies the allegations contained in paragraph numbered 2A that the paper writing executed during the year 1953 is not the last will and testament of Paul M. Gunzbourg. Respondent further denies that the said paper writing executed during 1953 was not executed in fact by Paul M. Gunzbourg and was not executed in the manner required by the Laws of the District of Columbia.

(c) Respondent denies the allegations contained in paragraph 2B that the attesting witnesses did not sign in each others presence and on the same date.

(d) Respondent denies the allegations contained in paragraph numbered 2C that the signature of the decedent Paul M. Gunzbourg appearing on the carbon copies of the paper writing executed during 1953 were not placed thereon with intention that they should constitute execution as a

last will and testament of the said paper writing executed during 1953. Respondent further denies all the allegations contained in the paragraphs
159 numbered 2C (1), (2), (3), and (4).

(c) Respondent denies the allegations contained in paragraph numbered 2D that decedent's omission to sign the original "ribbon" copy of paper writing executed during 1953 was deliberate.

(f) Answering the allegations of paragraph numbered 3 of the answer of Catherine Gunzbourg-Gurney, respondent states that he is without information or knowledge with regard to the manner and the time that the said Catherine Gunzbourg-Gurney alleges she affixed her signature on the paper writing executed during 1953 and therefore neither admits nor denies those allegations but demands strict proof thereof.

Petition For Caveat To Cross-Bill For Probate of Will Dated June 8, 1951

The petition for caveat of Eugene Corrao to the cross-bill filed herein by Catherine Gunzbourg-Gurney respectfully represents to this Honorable Court as follows:

1. Petitioner is an adult citizen of the United States, and a resident of Brooklyn, New York, that he is the person nominated by Paul M. Gunzbourg, deceased, as executor of his last will and testament, executed during the year 1953.

2. Petitioner is the executor named in the last will and testament executed during 1953 by Paul M. Gunzbourg, deceased, and that the said last will and testament of the decedent remained the last will and testament of the testator until his death.

3. Petitioner has notice that Catherine Gunzbourg-Gurney has filed a cross-bill seeking to have admitted to probate as the last will and testament of Paul M. Gunzbourg, a paper writing bearing date the 8th day of June 1951, which paper writing is now on file in this Court.

160 4. Petitioner's interests will be injuriously affected by the allowance of the said pretended last will and testament, or its admission to probate; that he hereby contests the probate and the validity of said paper writing purporting to be the last will and testament of Paul M. Gunzbourg,

deceased, on the following grounds which appear from the record herein:

A. That the said paper writing bearing date the 8th day of June 1951 is not the last will and testament of Paul M. Gunzbourg, deceased, for:

(1) The said paper writing bearing date the 8th day of June 1951 purporting to be the last will and testament of the said decedent, Paul M. Gunzbourg, was specifically revoked by the provisions of the last will and testament executed by the said decedent Paul M. Gunzbourg during 1953.

(2) The said decedent, Paul M. Gunzbourg, clearly intended to revoke as a last will and testament the paper writing bearing date the 8th day of June 1951. His intention to revoke the said paper writing bearing date the 8th day of June 1951 is clearly manifested by the mutilations and the defacements and deletions on pages 1, 3, 4, and 5 made by the decedent himself in his own handwriting of the original "ribbon" copy, now on file in this Court.

(3) Having a new will and testament prepared materially changing the provisions thereof compared to previous paper writings of a testamentary character, and the due execution thereof.

B. That the attesting witnesses to the paper writing bearing date the 8th day of June 1951 purporting to be a last will and testament did
161 not nor did any one of them sign his or her name as a witness to the said paper writing bearing date the 8th day of June 1951 at the request and in the presence of the decedent Paul M. Gunzbourg.

5. Petitioner is advised that a period of at least several months will elapse before a determination of the issues to be framed upon the caveat can be had, and petitioner accordingly states that a collector should be appointed to collect, conserve, and administer the assets of the estate of the decedent, pending the conclusion of this litigation.

WHEREFORE, the premises considered, petitioner respectfully prays:

1. That process may issue from this Court requiring the parties in interest to answer the exigencies of this proceeding.

2. That issues may be framed, to be tried by a jury, requiring the caveator to prove, preliminarily, that the paper writing bearing date the 8th day of June 1951, purporting to be a last will and testament of Paul M. Gunzbourg, deceased, remained the last will and testament of the testator until his death, except for the effect of the subsequent last will and testament, that is, the last will and testament executed by the decedent in 1953, if valid, to revoke the paper writing bearing date the 8th day of June 1951.

3. That the paper writing bearing date the 8th day of June 1951 may be refused probate and admission to record as the last will and testament of Paul M. Gunzbourg.

4. That issues may be framed to be tried by a jury to determine the facts with respect to the execution and the validity of the paper writing bearing date the 8th day of June 1951.

5. That a collector or collectors of the estate of Paul M. Gunzbourg, deceased, may be appointed to serve under bond until the termination of this proceeding.

162 6. For such other and further relief as to this Honorable Court may seem meet and proper.

/s/ Eugene Corrao
Petitioner

/s/ Charles L. Aulette
Attorney for Petitioner
Munsey Building
Washington 4, D. C.

COUNTY OF NEW YORK)
) SS:
STATE OF NEW YORK)

Eugene Corrao, of Brooklyn, New York, being first duly sworn on oath according to law deposes and says that he has read the foregoing pleadings by him subscribed, that he knows the contents thereof, and that the matters and things therein stated are true of his own knowledge except as to matters and things therein stated to be alleged upon information and belief, and that as to those matters and things he verily believes them to be true.

/s/ Eugene Corrao

[JURAT]

164 [Filed April 13, 1956]

PETITION FOR CAVEAT TO
PETITION AND CROSS-PETITION FOR
PROBATE, AND FOR LETTERS OF ADMINISTRATION

Petition for Caveat to Petition for Probate

The petition of Maxim J. Gurney respectfully represents to this Honorable Court:

1. That he is a citizen of the United States and a resident of New York, New York, and is over twenty-one years of age.

2. That he is the nephew and the sole heir and next of kin of Paul M. Gunzbourg, deceased.

3. That his interest will be injured materially by the admission to probate, as the last will and testament of Paul M. Gunzbourg, deceased, of the undated typewritten document which heretofore has been offered for such purpose by Eugene Corrao.

4. That he contests the validity of the undated typewritten document offered by Eugene Corrao and objects to its admission to probate on the following grounds:

a. The said undated typewritten document is not the last will and testament of the decedent, and was not intended by the decedent to be his last will and testament.

b. The said undated typewritten document was not executed by the decedent in the manner required by the law of the District of Columbia, in that it was never executed by the decedent or signed by him at any time with the intention that it should be so executed.

165 c. That the said undated typewritten document was not attested and subscribed in the manner required by the law of the District of Columbia, in that:

(1) The decedent did not sign the document either before or after the document was signed by the "witnesses"; none of the "witnesses" observed any signing of the document by the decedent or observed any signature of the decedent on the document; and the decedent did not acknowledge or indicate to any of the "witnesses" in any manner whatsoever that he had executed the document;

(2) the "witnesses" did not all sign the document on the same day, or in the presence of each other, or in the presence of the decedent.

5. That the signatures, initials, or marks appearing on pages 1 and 2 of the carbon copies of said undated typewritten document were not placed there with any intention that they should constitute due execution, but on the contrary, were placed there solely to indicate that the minor and immaterial corrections appearing on such pages of the carbon copies were made by the decedent, in that:

a. The marks made by the decedent were related solely to the corrections, and had absolutely no connection in time or place with any execution of the document or any signing of the document by the "witnesses". The marks were made simultaneously with the corrections, in September, 1953, when the decedent, first having occasion to peruse the documents, noticed the inconsequential errors.

b. The marks were made only on the pages of the carbon copies on which the decedent made corrections--pages 1 and 2--and were not made on pages 3 and 4, on which no corrections appear. Likewise, the marks were not placed anywhere on the original copy of the document, for the reason that the decedent did not make these minor
166 corrections on the original copy.

c. The said undated typewritten document contained a line for the decedent's signature at the proper place at the end of the text. It is apparent that the decedent was well aware that the proper execution of the will required his signature at the end of the text in the place so provided, for he previously had signed and executed in the proper places at least two prior wills, namely, the wills of 1943 and 1951, both of which are on file herein. Nevertheless, the decedent refused and deliberately omitted to sign either the original copy or the carbon copies of the document in the place which he knew was properly provided for his signature.

WHEREFORE, the premises considered, petitioner respectfully prays that probate be denied to the undated typewritten document offered by Eugene Corrao as the last will and testament of Paul M. Gunzbourg, that the petition for probate and for letters testamentary filed by Eugene Corrao be in all respects denied, and for such other and further relief as the nature of the case may require and to the Court may seem just and proper.

Petition for Caveat to Cross-Petition For Probate

The petition of Maxim J. Gurney respectfully represents to this Honorable Court:

1. That he is a citizen of the United States and a resident of New York, New York, and is over twenty-one years of age.

2. That he is the nephew and the sole heir at law and next of kin of Paul M. Gunzbourg, deceased.

3. That his interest will be injured materially by the admission to probate, as the last will and testament of Paul M. Gunzbourg, deceased, of a document dated June 8, 1951, which heretofore has been offered for such purpose by Catherine Gunzbourg-Gurney.

4. That he contests the validity of the document dated June 8, 1951, which has been offered by Catherine Gunzbourg-Gurney and objects to its admission to probate on the following grounds:

167 a. The said document dated June 8, 1951, although concededly validly executed as of that date, is not the last will and testament of the decedent, and was not intended by the decedent to be his last will and testament, in that the decedent unconditionally revoked said document as a last will and testament by cancelling, defacing and deleting, in his own handwriting, pages 1, 3, 4 and 5 of said will, and the principal clauses set forth therein.

b. Decedent intended to revoke said document as a last will and testament unconditionally because the principal and immediate object of his bounty, Helen Douglas, had died subsequent to the execution of the document, and the estate plan set forth therein, which was planned around the trusts and bequests for Helen Douglas' support, was no longer

purposeful, desirable, or of any further use.

5. That petitioner wishes leave to withdraw, revoke and cancel a document which he previously executed consenting to the probate of the alleged will of June 8, 1951, and for such leave, states that no action of any kind has been taken by the Court or by any party to this proceeding in reliance on such consent.

WHEREFORE, the premises considered, petitioner respectfully prays that his consent to probate on file herein be withdrawn, revoked, and cancelled, that probate be denied to the document dated June 8, 1951, which has been offered by Catherine Gunzbourg-Gurney as the last will and testament of Paul M. Gunzbourg, that the cross-petition for probate and letters testamentary filed by Catherine Gunzbourg-Gurney be in all respects denied, and for such other and further relief as the nature of the case may require and to the Court may seem just and proper.

Petition for Letters of Administration

The petition of Maxim J. Gurney respectfully represents to this Honorable Court:

168 1. That he is a citizen of the United States and a resident of New York, New York, and is over twenty-one years of age.

2. That he files this petition as the nephew and the sole heir and next of kin of Paul M. Gunzbourg, deceased, your petitioner being the only child of the decedent's deceased only brother.

3. That said Paul M. Gunzbourg was a citizen of the United States, and at the time of his death was domiciled in the District of Columbia.

4. That Paul M. Gunzbourg died on May 30, 1954, in the District of Columbia.

5. That the decedent died intestate, in that none of the three instruments in the nature of testamentary dispositions which have been found, and are on file herein, is the last will and testament of the decedent.

6. That of the three instruments referred to in paragraph 5 hereof, the first is dated February 11, 1943; the second is dated June 8, 1951; and the third is undated.

7. a. The instrument dated February 11, 1943, was expressly revoked by the instrument dated June 8, 1951, which concededly was validly executed as of that date.

b. The instrument dated June 8, 1951, although concededly validly executed as of that date, was unconditionally revoked by the decedent in the manner set forth herein in the Petition for Caveat to the Cross-Petition for Probate. The petitioner incorporates herein paragraphs 1 through 5, inclusive, of the Petition for Caveat to the Cross-Petition for Probate with the same force and effect as if these paragraphs were here set forth in their entirety.

c. The undated instrument was never executed by the decedent in the manner prescribed by law and was never intended by him to be so executed. The petitioner incorporates herein paragraphs 1 through 5,
169 inclusive, of the Petition for Caveat to Petition for Probate with the same force and effect as if these paragraphs were here set forth in their entirety.

8. That the decedent left surviving him as his sole heir and next of kin your petitioner, Maxim J. Gurney; that Maxim J. Gurney, your petitioner, resides at 135 W. 58th Street, New York, New York, and that your petitioner is an adult.

9. That, to petitioner's best information and knowledge, the decedent left no real estate nor interest in real estate in the District of Columbia or elsewhere in the United States, and that, upon information and belief, relying solely upon the recitals in the documents referred to in paragraphs 6 and 7 hereof, decedent may have left some real estate in Russia, the nature and value of which are unknown.

10. That the decedent left personal property in the District of Columbia, in New York, New York, and in London, England, with a total value of approximately $20,000.00. This personal property consists of bank deposits with the National Capital Bank, Washington, D. C. and Chase National Bank, New York, New York, securities located in New York, New York, and in London, England, and jewelry, antique furniture, books, and miscellaneous personal possessions in Washington,

D.C. and in New York, New York; and that, upon information and belief, the decedent left personal property in France and in Belgium, the nature and value of which are unknown.

11. That decedent, so far as your petitioner is able to ascertain, left debts estimated at $1,800.00, besides funeral expenses and expenses connected with decedent's last illness in the estimated amount of $2,000.00.

170 12. That petitioner, as next of kin and heir at law, is entitled to the residue of the decedent's estate after payment of debts, and that as the next of kin and heir at law, petitioner waives protection of any undertaking, insofar as his interests are concerned.

WHEREFORE, the premises considered, the petitioner prays:

1. That letters of administration be granted to this petitioner, and he be permitted to qualify as administrator by giving an undertaking in an amount sufficient only to secure the payment of the debts of the estate.

2. For such other and further relief as the nature of the case may require and to the Court may seem just and proper.

/s/ Maxim J. Gurney
Petitioner

/s/ Ira S. Siegler
607 Ring Building
Washington 6, D.C.
Attorney for Petitioner

[Italy Province of Rome, City of Rome,
Embassy of the U.S. of A.] [Seal]

MAXIM J. GURNEY, being first duly sworn, deposes and says: that he has read the foregoing petition by him subcribed and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

/s/ Maxim J. Gurney

[JURAT]

172 [Filed May 7, 1956]

ANSWER TO PETITION FOR CAVEAT TO CROSS PETITION FOR PROBATE, AND ANSWER TO PETITION FOR LETTERS OF ADMINISTRATION

Answer to Petition for Caveat

Catherine Gunzbourg Gurney, the Executrix named in the will dated June 8, 1951, filed in this Court as the last will and testament of Paul M. Gunzbourg, in answer to the caveat of Maxim J. Gurney to her cross petition for probate says as follows:

1. She admits the allegations of paragraph 1.

2. She admits the allegations of paragraph 2.

3. She neither admits nor denies the allegations of paragraph 3.

4. In answer to the allegations of paragraph 4, she says:

a. She denies that the will of June 8, 1951, is not the last will and testament of the decedent and denies that the decedent unconditionally revoked this document at any time.

b. She denies that the decedent intended to revoke the said document as a last will and testament for any purpose whatsoever.

5. In answer to paragraph 5, this cross-petitioner interposes no objection to the withdrawal and revocation of the intent to probate previously filed herein by Maxim J. Gurney.

Answer to Petition for Letters of Administration

In answer to petition for Letters of Administration filed herein by Maxim J. Gurney, Catherine Gunzbourg Gurney, the Executrix named

173 in the will dated June 8, 1951 filed in this Court as the last will and testament of Paul M. Gunzbourg, says as follows:

1. She admits the allegations of Paragraph 1.

2. She admits the allegations of paragraph 2.

3. She admits the allegations of paragraph 3.

4. She admits the allegations of paragraph 4.

5. She denies the allegations of paragraph 5 in that she alleges that the instrument of June 8, 1951, is the valid and existing last will and testament of the decedent.

6. She admits the allegations of paragraph 6.

7. In answer to the allegations of paragraph 7, she says:

a. She admits that the instrument dated February 11, 1943, was expressly revoked by the last will and testament dated June 8, 1951.

b. She denies that the instrument dated June 8, 1951, was ever unconditionally revoked by the decedent and states that that instrument remains the valid and existing last will and testament of the decedent.

c. She admits the allegations of paragraph c, of the petition.

8. She admits the allegations of paragraph 8.

9. She admits the allegations of paragraph 9.

10. She admits the allegations of paragraph 10.

11. She admits the allegations of paragraph 11.

12. She denies the allegations of paragraph 12.

Further answering, this Executrix says that she is willing that issues may be framed and tried before a jury as by law provided in order that the truth of the allegations of the aforesaid caveat and the caveat of this Executrix heretofore filed herein may be properly determined.

/s/ Catherine Gunzbourg-Gurney

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DIAMOND & BRYLAWSKI
Attorneys for Petitioner

By /s/ Henry H. Brylawski
1030 Woodward Bldg.
Washington 5, D. C.

COUNTY OF NEW YORK)
) ss:
STATE OF NEW YORK)

Catherine Gunzbourg-Gurney, of New York, New York, being first duly sworn on oath according to law deposes and says that she has read the foregoing petition by her subscribed, that she knows the contents thereof, and that the matters and things therein stated are true of her own knowledge except as to matters and things therein stated to be

alleged upon information and belief, and that as to those matters and things she verily believes them to be true.

/s/ Catherine Gunzbourg-Gurney

[JURAT]

[Certificate Of Mailing]

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175 [Filed September 21, 1956]

ANSWER TO PETITION FOR CAVEAT TO PETITION FOR PROBATE AND ANSWER TO PETITION FOR LETTERS OF ADMINISTRATION

Answer to Petition For Caveat To Petition For Probate

Comes now Eugene Corrao, the executor named in the last will and testament executed during the year 1953 by Paul M. Gunzbourg, deceased, and offered for probate and record in this Court on the 30th day of June 1954, and for answer to the Answer to the Petition for Caveat to the Petition for Probate filed herein by Maxim J. Gurney states as follows:

1. He admits the allegations contained in paragraph 1.

2. Answering the allegations contained in paragraph 2 he states as follows:

a) He admits that Maxim Gurney is a nephew of the decedent Paul M. Gunzbourg.

b) He is without sufficient information or knowledge to form an opinion whether the said Maxim Gurney is the sole heir

176 and next of kin of the decedent Paul M. Gunzbourg, and, therefore, he neither admits nor denies the allegation. Accordingly, strict proof of the said allegation is hereby demanded.

3. He denies the allegations contained in paragraph 3.

4. Answering the allegations contained in paragraph 4 he states as follows:

a) He denies the allegations contained in paragraph 4(a), and states that the last Will and Testament executed by the decedent, Paul M. Gunzbourg, during the year 1953, with the month and day left blank, and offered for probate by petitioner, Eugene Corrao, is the last Will and Testament of the decedent, Paul M. Gunzbourg; and the said written instrument was intended by the decedent, Paul M. Gunzbourg to be his last Will and Testament.

b) He denies the allegations of paragraph 4(b).

c) In answer to the allegations of paragraph 4(c) he denies the allegations contained in paragraph 4(c)(1) and paragraph 4(c)(2).

5. Answering the allegations contained in paragraph 5 he denies the allegations contained in paragraph 5. Further answering the allegations contained in paragraph 5 he states as follows:

a) He denies the allegations contained in paragraph 5(a).

b) He denies the allegations contained in paragraph 5(b).

c) He denies the allegations contained in paragraph 5(c).

177 Answer To Petition For Letters of Administration.

Comes now Eugene Corrao, the executor named in the last Will and Testament executed during the year 1953 by Paul M. Gunzbourg, deceased, and offered for probate and record in this Court on the 30th day of June, 1954, and for answer to the Petition for Letters of Administration filed herein by Maxim J. Gurney states as follows:

1. Answering the allegations contained in paragraph 1 he states that he is without sufficient information or knowledge to form an opinion whether the said Maxim J. Gurney is a citizen of the United States, and a resident of New York, and is over twenty-one (21) years of age, and, therefore, he neither admits nor denies the said allegations. However, strict proof of the said allegations is hereby demanded.

2. He admits that the said Maxim J. Gurney is a nephew of the decedent, Paul M. Gunzbourg. However, he is without sufficient information or knowledge to form an opinion whether the said Maxim J. Gurney

is the sole heir and next of kin of the decedent, Paul M. Gunzbourg, and, therefore, he neither admits nor denies the said allegation. Accordingly, strict proof of the allegation is hereby demanded.

3. He admits the allegations contained in paragraph 3.

4. He admits the allegations contained in paragraph 4.

5. He denies the allegations contained in paragraph 5. Further answering the allegations of paragraph 5 he alleges that the written instrument executed during the year 1953 by Paul M. Gunzbourg, deceased, and offered for probate and record in this Court on the 30th day of June, 1954, by your petitioner, Eugene Corrao, is the valid and existing last Will and Testament of Paul M. Gunzbourg, deceased.

178 6. Answering the allegations contained in paragraph 6 he states as follows:

a) He admits that one of the written instruments found among decedent's effects in the nature of a testamentary disposition, and filed in this Court on the 30th day of June 1954 by your petitioner, Eugene Corrao, is dated February 11, 1943; that another of the said written instruments is dated June 8, 1951.

b) He denies that a third written instrument found among decedent's effects in the nature of a testamentary disposition, and offered for probate and record in this Court on the 30th day of June 1954 by your petitioner, Eugene Corrao, is undated. Further answering the said allegation contained in paragraph 6, he states that the said written instrument was executed and dated by the decedent, Paul M. Gunzbourg, during the year 1953, and the month and day only were left blank.

7. Answering the allegations of paragraph 7 he states as follows:

a) He admits the allegations contained in paragraph 7(a) that the instrument dated February 11, 1943, was expressly revoked by the last Will and Testament dated June 8, 1951.

b) He admits that the instrument dated June 8, 1951, was unconditionally revoked by the decedent, Paul M. Gunzbourg as set forth in paragraph 7(b). Further answering the said allegations he

179 states that the decedent, Paul M. Gunzbourg, clearly intended to revoke as a last Will and Testament the paper writing bearing date the 8th day of June 1951. His intention to revoke the said paper writing bearing date the 8th day of June 1951 is clearly manifested by the mutilations and the defacements and deletions on pages 1, 3, 4, and 5 made by the decedent himself in his own handwriting on the original "ribbon" copy, now on file in this Court, and also by having a new Will and Testament prepared materially changing the provisions thereof compared to the previous paper writings of a testamentary character, and the due execution of the said instrument during the year 1953 which instrument contains among other things a clause specifically revoking all other wills and codicils previously executed by the decedent, Paul M. Gunzbourg, and containing a further provision, namely, to wit: "revoking.... particularly my previous wills of February 11, 1943, and June 8, 1951, which are superseded by this Will."

c) He denies the allegations contained in paragraph 7 (c). Further answering the said allegations, he states that the written instrument executed during the year 1953 by Paul M. Gunzbourg, deceased, was validly and duly executed by the decedent, Paul M. Gunzbourg, and that the said decedent, Paul M. Gunzbourg, executed the said written instrument intending it to be his last Will and Testament.

8. He is without sufficient information and knowledge to either admit or deny the allegations contained in paragraph 8. Accordingly, he demands strict proof of the said allegations.

9. He admits the allegations contained in paragraph 9.

10. He admits the allegations contained in paragraph 10. With respect to the personal property in Belgium and France reportedly left by decedent as alleged in paragraph 10, he is without information or knowledge.

11. Answering the allegations contained in paragraph 11, he states that to his best information and knowledge the decedent Paul M. Gunzbourg,

left debts, including funeral expenses and expenses connected with decedent's last illness, amounting to approximately three thousand five hundred ($3,500.00) dollars.

12. He denies the allegations contained in paragraph 12.

Wherefore, the premises considered, the petitioner, Eugene Corrao, respectfully prays:

1. That issues may be framed, to be tried by a jury, requiring the petitioner Maxim J. Gurney to prove, preliminarily that the last Will and Testament executed by the decedent, Paul M. Gunzbourg, during the year 1953 is not the legally valid last Will and Testament of the decedent, Paul M. Gunzbourg.

2. That letters of administration be refused to petitioner, Maxim J. Gurney, and that he be refused permission to qualify as administrator of the Estate of Paul M. Gunzbourg, deceased.

3. For such other and further relief as the nature of the case
180 may require and to this Honorable Court may seem meet and proper.

/s/ Eugene Corrao
Petitioner

AULETTE, DAVIS, OGDEN,
LEONARD & CERVERA

By /s/ Charles L. Aulette
* * *
Attorney for Petitioner

COUNTY OF NEW YORK)
STATE OF NEW YORK) SS:
)

Eugene Corrao, of Brooklyn, New York, being first duly sworn on oath according to law deposes and says that he has read the foregoing pleadings by him subscribed, that he knows the contents thereof, and that the matters and things therein stated are true of his own knowledge except as to matters and things therein stated to be alleged upon information and belief and that as to those matters and things he verily believes them to be true.

/s/ Eugene Corrao

[JURAT]

182 **ORDER FRAMING ISSUES** [Filed October 23, 1956]

Upon consideration of the caveat of Maxim J. Gurney, filed against certain typewritten documents, the first bearing date of June 8, 1951 and the second undated but marked "1953", and upon consideration of the caveat of Catherine Gunzbourg Gurney, filed against a certain typewritten document which is undated but marked "1953", all of which documents are on file herein and purport to be the last wills and testaments of Paul M. Gunzbourg, deceased, and of the answers of Catherine Gunzbourg Gurney and of Eugene Corrao filed thereto, it is by the Court this 23d day of October, 1956,

ORDERED, that the following issues be and they are hereby framed to be tried before a jury on the 30th day of November, 1956:

AS A PRELIMINARY ISSUE

Was the will dated June 8, 1951, on file herein, properly executed, and did it remain the last will and testament of Paul M. Gunzbourg, deceased, until his death, except for the effect of the subsequent will, if valid, to revoke it?

AS REGULAR ISSUES

ONE: Was said typewritten document dated June 8, 1951, on file herein, the last will and testament of Paul M. Gunzbourg, deceased?

183 TWO: Was said typewritten document dated June 8, 1951 revoked as a last will and testament by Paul M. Gunzbourg, deceased?

THREE: Was the undated typewritten document marked "1952", on file herein, intended by Paul M. Gunzbourg, deceased, to be his last will and testament?

FOUR: Was said undated typewritten document executed, subscribed and attested in due form, as required by the laws of the District of Columbia?

FIVE: Was said undated typewritten document the last will and testament of Paul M. Gunzbourg, deceased?

/s/ James W. Morris
Judge

I CONSENT:

/s/ Ira S. Siegler
* * *
Attorney for Maxim J. Gurney

/s/ Charles L. Aulette
* * *
Attorney for Eugene Corrao

/s/ Henry H. Brylawski
* * *
Attorney for Catherine Gunzbourg Gurney

Dated: October 22, 1956

184 [Filed January 15, 1957]

AMENDED PETITION FOR PROBATE OF WILL AND FOR LETTERS TESTAMENTARY

The petition of Eugene Corrao respectfully represents to this Honorable Court as follows:

1. Petitioner is an adult citizen of the United States, and a resident of Brooklyn, New York, and he files this amended petition for probate of will and for letters testamentary as executor nominated in the last will and testament of Paul M. Gunzbourg, deceased.

January 15, 1957
Leave to file granted
/s/ Pine, Judge

2. Petitioner on the 30th day of June, 1954, filed an original petition for probate of will and for letters testamentary. On December 23, 1956, among the personal effects of Paul M. Gunzbourg, deceased, petitioner discovered a paper writing purporting to be a last will and testament of the said Paul M. Gunzbourg, deceased, showing as date of execution _____ day of February, 1952. That paper writing purporting to be a last will and testament was filed in the office of the Register of Wills for the District of Columbia on the 7th day of January, 1957.

185 3. Paragraph 4 of the original petition filed on the 30th day of June, 1954, should be amended to include the additional information with respect to the paper writing purporting to be a will referred to in paragraph 2 hereof. Therefore, paragraph 4 of the original petition filed on the 30th day of June, 1954, which reads as follows: "Two other instruments in the nature of a testamentary dispositions of the decedent's estate have been found; one dated the 11th day of February 1943 and the other dated the 8th day of June 1951. Both of said instruments are now on file in the office of the Register of Wills for the District of Columbia," should read as follows: Three other instruments in the nature of a testamentary disposition of the decedent's estate have been found; one dated the 11th day of February, 1943; one dated the 8th day of June, 1951;

Leave to file Recommended
/s/ Theodore Cogswell
Register of Wills

and one dated _____ day of February, 1952. All three of the said instruments are now on file in the Office of the Register of Wills for the District of Columbia.

4. Paragraph 7 of the original petition filed on June 30, 1954, should be amended to include the names of the persons listed in the instrument in the nature of a testamentary disposition dated the _____ day of February, 1952, named as legatees therein. Thus, paragraph 7 of the original petition filed on the 30th day of June, 1954, should be amended to read as follows:

a. Last will and testament executed during the year 1953 -

(1) Maxim J. Gurney, to petitioner's best information and knowledge having a permanent residence at 135 West 58th Street, New York, New York. The said Maxim J. Gurney resides at times in Rome, Italy.

186 (2) George Rotvand, residing at 4 rue Octave Feuillet, Paris, France.

b. Instrument in the nature of a testamentary disposition dated the _____ day of February, 1952 -

(1) Maxim J. Gurney, recited in paragraph 4. a. (1) hereof.

(2) George Rotvand, recited in paragraph 4. a. (2) hereof.

(3) Helen Douglas, in case she should survive the decedent herein. The said Helen Douglas departed this life several years ago.

(4) Catherine Gunzbourg-Gurney, sister-in-law of the decedent herein, residing at 135 West 58th Street, New York, New York.

c. Instrument in the nature of a testamentary disposition dated the 8th day of June, 1951.

(1) Maxim J. Gurney, recited in paragraph 4. a. (1) hereof.

(2) George Rotvand, recited in paragraph 4. a. (2) hereof.

(3) Helen Douglas, recited in paragraph 4. b. (3) hereof.

(4) Catherine Gunzbourg, sister-in-law of the decedent herein, residing at 135 West 58th Street, New York, New York. The said Catherine Gunzbourg is the same person referred to as Catherine Gunzbourg-Gurney recited in paragraph 4.b.(4) hereof.

d. Instrument in the nature of a testamentary disposition dated the 11th day of February, 1943.

187 (1) George Rotvand, recited in paragraph 4.a.(2) hereof.

(2) Jules Gunzbourg, decedent's brother, who departed this life several years ago.

(3) Helen Douglas, recited in paragraph 4.b.(3) hereof.

(4) Catherine Gunzbourg, recited in paragraph 4.c.(4) hereof.

(5) Maxim Gurney, recited in paragraph 4.a.(1) hereof.

(6) Eugenie Gunzbourg, decedent's mother, who departed this life several years ago.

WHEREFORE, the premises considered, petitioner respectfully prays this Honorable Court as follows:

1. That paragraph 3 above be substituted for paragraph 4 of the original petition filed on the 30th day of June, 1954.

2. That paragraph 4 above be substituted for paragraph 7 of the original petition filed on the 30th day of June, 1954.

3. That in all other respects the original petition filed on the 30th day of June, 1954, remain the same.

4. For such other and further relief as the nature of the case may require and to this Honorable Court shall appear just and proper.

/s/ Eugene Corrao
Petitioner

AULETTE, DAVIS, OGDEN,
LEONARD & CERVERA

By /s/ Charles L. Aulette
Attorney for Petitioner

* * *

COUNTY OF NEW YORK)
) SS:
STATE OF NEW YORK)

188 Eugene Corrao, of Brooklyn, New York, being first duly sworn on oath according to law deposes and says that he has read the foregoing petition by him subscribed, that he knows the contents thereof, and that the matters and things therein stated are true of his own knowledge except as to matters and things therein stated to be alleged upon information and belief, and that as to those matters and things he verily believes them to be true.

/s/ Eugene Corrao

[JURAT]

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190 [Filed January 23, 1957]

ANSWER AND OBJECTIONS TO AMENDED PETITION FOR PROBATE AND AMENDED CROSS PETITION FOR PROBATE OF FEBRUARY, 1952 WILL

ANSWER TO AMENDED PETITION FOR PROBATE

In answer to the amended petition for probate filed herein by Eugene Corrao, Catherine Gunzbourg-Gurney respectfully states:

1. That she is a citizen of the United States and a resident of the State of New York of adult age, that she is one of the persons who were named by the above named decedent, Paul M. Gunzbourg, as executors of his last will and testament dated in February, 1952, and that she is a beneficiary under that will.

2. That her interests will be materially injured by the admission to probate of the document offered by Eugene Corrao and that she objects to its admission and probate on the following grounds which appear from the record herein:

A. The said document bearing no date but apparently prepared in 1953 is not the last will and testament of the decedent, was not intended to have been executed by him as such, and was not executed by him either in fact nor in the manner required by the District of Columbia law.

B. The attesting witnesses to the said alleged will did not sign in each others' presence, nor on the same date, and did not witness any signing or signature on the said document by the decedent.

191 C. The signature or initials of the decedent, if the said marks be such, that appear on the carbon copies of the said document were not placed thereon with the intention that they should constitute execution since:

(1.) The said marks were made on the carbon copies only and were deliberately omitted from the original.

(2.) The said marks were intended to indicate typographical errors only since they appear on pages one and two of the said carbon copies on which pages errors occurred, and do not appear on pages three and four on which no errors apparently appeared.

(3.) The last page of the said document contained a line for the decedent's signature which was deliberately left blank by him, not only on the original, but also on the copies of the said document.

(4.) Decedent was aware of the necessity of signing on the line provided for his signature on the last page of the said document, as is apparent from the fact that he caused the alleged witnesses to sign on that page and at the places provided for the signatures of witnesses immediately below the plainly marked line for his own signature, and since he was personally familiar with the usual manner in which wills are executed inasmuch as he had previously signed and executed at least three prior testamentary documents, namely the wills of 1943, 1951, and February, 1952, all of which are on file herein, and all of which are properly signed and executed at the places and on the lines provided.

D. The original "ribbon" copy of the said document was not signed or marked by the decedent. That this omission was deliberate is indicated by:

(1.) The fact that he was aware that this copy rather than the carbon copies would properly constitute his will if properly executed,

192 since it was this copy only that was signed by petitioner herein at his request, as will be explained in paragraph 3 below.

(2.) The fact that he avoided signing, correcting, or marking this copy in any way whatsoever, even though the corrections made on the carbon copies were routine in nature and did not materially affect the testamentary disposition expressed.

3. In explanation of the appearance of this petitioner's signature on the original copy of the said document, petitioner states that she was in Washington, D. C., between January 18 and 20, 1954, and that during that period she signed the document at his request. Petitioner further states that the decedent did not state nor explain the nature of the document and that he did not request her to sign any copy other than the original. Petitioner further states that she did not see the decedent sign the original or any other copy of the document nor did she see his signature, initials, or mark on the original or any other copy of the document.

AMENDED CROSS PETITION FOR PROBATE OF WILL DATED FEB., 1952

In her Cross Petition for Probate heretofore filed herein, Catherine Gunzbourg-Gurney asked that the paper writing dated June 8, 1951 be admitted to probate as the last will and testament of Paul M. Gunzbourg. In his Amended Petition for Probate now filed herein, Eugene Corrao discloses that there has now been found among the personal effects of the decedent a later will dated February, 1952, which has the effect of revoking the June 8, 1951 will. Accordingly, Catherine Gunzbourg-Gurney now petitions the Court that the will now on file, dated February, 1952, be admitted to probate as the last will and testament of Paul M. Gunzbourg and in support thereof states as follows:

193 1. That the said Paul M. Gunzbourg was a citizen of the United States and a resident of the District of Columbia and died on May 30, 1954. That there are now on file in the office of the Register of Wills of the District of Columbia the following papers, purporting to be of a testamentary nature:

a. Document dated February 11, 1943

b. Document dated June 8, 1951

c. Document dated February, 1952

d. Original and two copies of a document unsigned and undated but apparently prepared in 1953.

2. That this petitioner believes the document dated February, 1952 to be the valid and existing last will and testament of the said Paul M. Gunzbourg; that the said document effectively revoked any prior wills and specifically revoked the documents of February 11, 1943 and June 8, 1951; and that the 1953 document referred to in paragraph 1. d., above, is not and never was the valid last will and testament of the decedent and in fact never had any testamentary value as is more fully set forth heretofore in petitioner's objections to the probate of the said document, appearing above.

3. That petitioner is the widow of the brother of the decedent and that she is the Catherine Gunzbourg who is named in the said February, 1952 will as co-executor of the decedent.

4. That decedent was not survived by wife, children, or parents, and that his sole heir and next of kin is Maxim J. Gurney, 135 W. 58th St., New York City, a nephew of decedent and petitioner's son, and who is also named as co-executor in the said will of February, 1952.

5. That in the papers of testamentary disposition referred to above, decedent named the following persons as legatees:

In the document dated February 11, 1943, George Rotvand, residing at 4 Rue Octave, Feuillet, Paris, France; Jules Gunzbourg, decedent's
194- brother, also now deceased; Helen Douglas, now deceased; the said Maxim J. Gurney; and Eugenie Gunzbourg, decedent's mother, also now deceased.

In the document dated June 8, 1951, the said Maxim J. Gurney, George Rotvand, and Helen Douglas, named above, and in addition Catherine Gunzbourg-Gurney, petitioner herein.

In the document dated February, 1952, the said Maxim J. Gurney, George Rotvand, Helen Douglas, and Catherine Gunzbourg-Gurney.

In the document unsigned and undated, but apparently prepared in 1953, the said Maxim J. Gurney and George Rotvand, and in addition Eugene Corrao, named as Executor, residing at 353 Grove Street,

Brooklyn 37, New York, and Mrs. Adrienne Pahud, 2900 Adams Mill Road, N.W., Washington, D. C.

6. Petitioner states on information and belief that the decedent left no real estate or interest in real estate in the United States or elsewhere except that, relying on paragraphs SECOND and THIRD of the will offered for probate herein, decedent may have left interests in property of unknown value and extent in Russia, Belgium, and France.

7. Petitioner believes that decedent was possessed at the time of his death of personal property, totalling approximately twenty-thousand dollars ($20,000.00) in value, consisting of money on deposit in New York and Washington, D.C., banks, securities on deposit in New York and London, England, jewelry, antique furniture, and paintings.

8. By reference to the petition of Eugene Corrao filed herein, petitioner states on information and belief that decedent left debts, including funeral expenses, of approximately Three Thousand Five Hundred Dollars ($3,500.00).

9. Inasmuch as a considerable delay has already been experienced in bringing this cause to trial due to the number of petitions and cross
195 petitions on file, and since all parties are now required to amend their pleadings due to the discovery of the February, 1952 will propounded herein, a further delay in final administration of this estate will inevitably ensue; petitioner believes, therefore, that it will be to the best interests of all parties concerned in decedent's estate that a collector be appointed with full power to take possession of, hold, manage, conserve, control, and to collect the income from real estate, if any, as well as personal property, and with power to discharge all of the duties of an administrator pendente lite as provided by law.

WHEREFORE, the premises considered, petitioner respectfully prays:

1. That the Court grant letters of collection to this petitioner upon the estate of Paul M. Gunzbourg, deceased.

2. That probate be denied to the purported will drawn in the year 1953, and that petition of Eugene Corrao for letters of administration under the said alleged will be denied.

3. That the last will and testament dated February, 1952, be admitted to probate and record as the last will and testament of the said Paul M. Gunzbourg, deceased, as to both real estate and personal property.

4. That citation may issue against such of the heirs at law and next of kin who do not waive citation and file their consents, and that notice by publication or other substituted process may issue directed to any of them who may be returned "Not to be found."

5. That letters testamentary issue to petitioner, Catherine Gunzbourg-Gurney, as executrix named in decedent's last will and testament dated February, 1952, and that petitioner be permitted to
196 qualify as executrix by giving a nominal undertaking with surety approved by this Honorable Court in an amount sufficient to secure the payment of the debts of the estate only.

6. For such other and further relief as the nature of the case may require and to this Honorable Court shall appear just and proper.

/s/ Catherine Gunzbourg-Gurney
Petitioner

/s/ Henry H. Brylawski
Attorney for Petitioner

* * * *

COUNTY OF NEW YORK)
) ss:
STATE OF NEW YORK)

Catherine Gunzbourg-Gurney, of New York, New York, being first duly sworn on oath according to law deposes and says that she has read the foregoing petition by her subscribed, that she knows the contents thereof, and that the matters and things therein stated are true of her own knowledge except as to matters and things therein stated to be alleged upon information and belief, and that as to those matters and things she verily believes them to be true.

/s/ Catherine Gunzbourg-Gurney

[JURAT]

[Certificate Of Mailing]

197 [Filed January 28, 1957]

AMENDED PETITION FOR CAVEAT TO AMENDED PETITION AND AMENDED CROSS-PETITION FOR PROBATE, AND FOR LETTERS OF ADMINISTRATION

The petition of Maxim J. Gurney respectfully represents to this Honorable Court:

1. That on April 14, 1956, he filed in this proceeding a petition (a) for caveat to the petition for probate of a will marked "1953" filed by Eugene Corrao; (b) for caveat to the cross-petition for probate of a will dated June 8, 1951, filed by Catherine Gunzbourg-Gurney; and (c) for letters of administration.

2. That the trial of issues in this proceeding was set for January 14, 1957, by order of this Court dated November 30, 1956.

3. That on or about January 3, 1957, Eugene Corrao revealed that he had discovered an additional purported will of the decedent dated February, 1952, among the papers of the decedent which he, Corrao, had had in his possession since about June 1, 1954.

4. That Eugene Corrao has filed an amended petition for probate of the will marked "1953" and Catherine Gunzbourg-Gurney has filed (a) an amended caveat to such petition, and (b) an amended petition for probate of the newly-discovered will of 1952.

198 5. By reason of the premises, Maxim J. Gurney files the following amended petition for caveat and for letters of administration.

Amended Petition for Caveat to Amended Petition for Probate

The amended petition of Maxim J. Gurney respectfully represents to this Honorable Court:

1. That he is a citizen of the United States and a resident of New York, New York, and is over twenty-one years of age.

2. That he is the nephew and the sole heir and next of kin of Paul M. Gunzbourg, deceased.

3. That his interest will be injured materially by the admission to probate, as the last will and testament of Paul M. Gunzbourg, deceased, of the undated typewritten document which heretofore has been offered for

such purpose by Eugene Corrao.

4. That he contests the validity of the undated typewritten document offered by Eugene Corrao and objects to its admission to probate on the following grounds:

(a) The said undated typewritten document is not the last will and testament of the decedent, and was not intended by the decedent to be his last will and testament.

(b) The said undated typewritten document was not executed by the decedent in the manner required by the law of the District of Columbia, in that it was never executed by the decedent or signed by him at any time with the intention that it should be so executed.

(c) That the said undated typewritten document was not attested and subscribed in the manner required by the law of the District of Columbia, in that:

(1) the decedent did not sign the document either before or after the document was signed by the "witnesses"; none of the
199 "witnesses" observed any signing of the document by the decedent or observed any signature of the decedent on the document; and the decedent did not acknowledge or indicate to any of the "witnesses" in any manner whatsoever that he had executed the document;

(2) the "witnesses" did not all sign the document on the same day, or in the presence of each other, or in the presence of the decedent.

5. That the signatures, initials, or marks appearing on pages 1 and 2 of the carbon copies of said undated typewritten document were not placed there with any intention that they should constitute due execution, but on the contrary, were placed there solely to indicate that the minor and immaterial corrections appearing on such pages of the carbon copies were made by the decedent, in that:

(a) The marks made by the decedent were related solely to the corrections, and had absolutely no connection in time or place with any execution of the document or any signing of the document by the

"witnesses". The marks were made simultaneously with the corrections, in September, 1953, when the decedent, first having occasion to peruse the documents, noticed the inconsequential errors.

(b) The marks were made only on the pages of the carbon copies on which the decedent made corrections--pages 1 and 2-- and were not made on pages 3 and 4, on which no corrections appear. Likewise, the marks were not placed anywhere on the original copy of the document, for the reason that the decedent did not make these minor corrections on the original copy.

(c) The said undated typewritten document contained a line for the decedent's signature at the proper place at the end of the text. It is apparent that the decedent was well aware that the proper execution
200 of the will required his signature at the end of the text in the place so provided, for he previously had signed and executed in the proper places at least three prior wills, namely, the wills of 1943, 1951 and 1952, all of which are on file herein. Nevertheless, the decedent refused and deliberately omitted to sign either the original copy or the carbon copies of the document in the place which he knew was properly provided for his signature.

WHEREFORE, the premises considered, petitioner respectfully prays that probate be denied to the undated typewritten document offered by Eugene Corrao as the last will and testament of Paul M. Gunzbourg; that the petition and amended petition for probate and for letters testamentary filed by Eugene Corrao be in all respects denied; and for such other and further relief as the nature of the case may require and to the Court may seem just and proper.

Amended Petition for Caveat to Amended Cross-Petition for Probate

The petition of Maxim J. Gurney respectfully represents to this Honorable Court:

1. That he is a citizen of the United States and a resident of New York, New York, and is over twenty-one years of age.

2. That he is the nephew and the sole heir at law and next of kin of Paul M. Gunzbourg, deceased.

3. That his interest will be injured materially by the admission to probate, as the last will and testament of Paul M. Gunzbourg, deceased, of a document dated February, 1952, which heretofore has been offered for such purpose by Catherine Gunzbourg-Gurney.

4. That he contests the validity of the document dated February, 1952, which has been offered by Catherine Gunzbourg-Gurney and objects to its admission to probate on the following grounds:

201 The said document dated February, 1952, although concededly validly executed as of that date, is not the last will and testament of the decedent, and was not intended by the decedent to be his last will and testament, in that the decedent unconditionally revoked said document because the principal and immediate object of his bounty, Helen Douglas, had died subsequent to the execution of the document, and the estate plan set forth therein, which was planned around the trusts and bequests for Helen Douglas' support, was no longer purposeful, desirable, or of any further use.

WHEREFORE, the premises considered, petitioner respectfully prays that probate be denied to the document dated February, 1952, which has been offered by Catherine Gunzbourg-Gurney as the last will and testament of Paul M. Gunzbourg; that the Amended Cross-Petition for Probate and Letters Testamentary filed by Catherine Gunzbourg-Gurney be in all respects denied; and for such other and further relief as the nature of the case may require and to the Court may seem just and proper.

Amended Petition for Letters of Administration

The petition of Maxim J. Gurney respectfully represents to this Honorable Court:

1. That he is a citizen of the United States and a resident of New York, New York, and is over twenty-one years of age.

2. That he files this petition as the nephew and the sole heir and next of kin of Paul M. Gunzbourg, deceased, your petitioner being the only child of the decedent's deceased only brother.

3. That said Paul M. Gunzbourg was a citizen of the United States, and at the time of his death was domiciled in the District of Columbia.

4. That Paul M. Gunzbourg died on May 30, 1954, in the District of Columbia.

202 5. That the decedent died intestate, in that none of the four instruments in the nature of testamentary dispositions which have been found, and are on file herein, is the last will and testament of the decedent.

6. That of the four instruments referred to in paragraph 5 hereof, the first is dated February 11, 1943; the second is dated June 8, 1951; the third is dated February, 1952, and the fourth is undated, although marked "1953".

7. (a) The instruments dated February 11, 1943 and June 8, 1951, were expressly revoked by the instrument dated February, 1952, which concededly was validly executed as of that date.

(b) The instrument dated February, 1952, although concededly validly executed as of that date, was unconditionally revoked by the decedent as set forth herein in the Amended Petition for Caveat to the Amended Cross-Petition for Probate. The petitioner incorporates herein paragraphs 1 through 4, inclusive, of the Amended Petition for Caveat to the Amended Cross-Petition for Probate with the same force and effect as if these paragraphs were here set forth in their entirety.

(c) The undated instrument marked "1953" was never executed by the decedent in the manner prescribed by law and was never intended by him to be so executed. The petitioner incorporates herein paragraphs 1 through 5, inclusive, of the Amended Petition for Caveat to the Amended Petition for Probate with the same force and effect as if these paragraphs were here set forth in their entirety.

8. That the decedent left surviving him as his sole heir and next of kin your petitioner, Maxim J. Gurney; that Maxim J. Gurney, your petitioner, resides at 135 W. 58th Street, New York, New York, and that your petitioner is an adult.

203 9. That, to petitioner's best information and knowledge, the decedent left no real estate nor interest in real estate in the District of Columbia or elsewhere in the United States, and that, upon information and belief, relying solely upon the recitals in the documents referred to in paragraphs 6 and 7 hereof, decedent may have left some real estate in Russia, the nature and value of which are unknown.

10. That the decedent left personal property in the District of Columbia, in New York, New York, and in London, England, with a total value of approximately $20,000.00. This personal property consists of bank deposits with the National Capital Bank, Washington, D.C. and Chase National Bank, New York, New York, securities located in New York, New York, and in London, England, and jewelry, antique furniture, books, and miscellaneous personal possessions in Washington, D.C. and in New York, New York; and that, upon information and belief, the decedent left personal property in France and in Belgium, the nature and value of which are unknown.

11. That decedent, so far as your petitioner is able to ascertain, left debts estimated at $1,800.00, besides funeral expenses and expenses connected with decedent's last illness, in the estimated amount of $2,000.00.

12. That petitioner, as next of kin and heir at law, is entitled to the residue of the decedent's estate after payment of debts, and that as the next of kin and heir at law, petitioner waives protection of any undertaking, insofar as his interests are concerned.

WHEREFORE, the premises considered, the petitioner prays:

1. That letters of administration be granted to this petitioner, and that he be permitted to qualify as administrator by giving an undertaking in an amount sufficient only to secure the payment of the debts of
204 the estate.

2. That issues be framed to determine the facts with respect to the execution and validity of the undated document marked "1953" and with respect to the revocation of the document dated February, 1952.

3. That a collector or collectors of the Estate of Paul M. Gunzbourg, deceased, may be appointed to serve under bond until the termination of this proceeding.

4. For such other and further relief as the nature of the case may require and to the Court may seem just and proper.

/s/ Maxim J. Gurney
Petitioner

/s/ Ira S. Siegler

607 Ring Bldg.
Washington 6, D.C.

Attorney for Petitioner

MAXIM J. GURNEY, being first duly sworn, deposes and says that he has read the foregoing petition by him subscribed and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

/s/ Maxim J. Gurney

[JURAT]

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206 [Filed January 30, 1957]

ANSWER TO AMENDED PETITION FOR CAVEAT AND TO AMENDED PETITION FOR LETTERS OF ADMINISTRATION

Answer to Amended Petition for Caveat

Catherine Gunzbourg Gurney, the Executrix named in the will dated February, 1952, filed in this Court as the last will and testament of Paul M. Gunzbourg, in answer to the amended petition for caveat of Maxim J. Gurney to her amended cross petition for probate says as follows:

1. She admits the allegations of paragraph 1.

2. She admits the allegations of paragraph 2.

3. She neither admits nor denies the allegations of paragraph 3.

4. In answer to the allegations of paragraph 4:

(a) She reaffirms that the will of February, 1952 is the last will and testament of the decedent and that it was so intended by the

decedent. She denies that the decedent revoked this document at any time.

(b) She states that the death of Helen Douglas subsequent to the execution of the said last will and testament has no effect on its validity both as a matter of law and by reason of the fact that the said will provides for an alternate estate plan to take effect in the event of her prior death.

207 Answer to Amended Petition for Letters of Administration

In answer to the amended petition for letters of administration filed herein by Maxim J. Gurney, Catherine Gunzbourg Gurney, the Executrix named in the will dated February, 1952, filed in this Court as the last will and testament of Paul M. Gunzbourg, says as follows:

1. She admits the allegations of paragraph 1.
2. She admits the allegations of paragraph 2.
3. She admits the allegations of paragraph 3.
4. She admits the allegations of paragraph 4.
5. She denies the allegations of paragraph 5 in that she alleges that the instrument of February, 1952, is the valid and existing last will and testament of the decedent.
6. She admits the allegations of paragraph 6.
7. In answer to the allegations of paragraph 7, she says:

(a) She admits allegations of paragraph 7 (a).

(b) She denies that the instrument dated February, 1952, was ever unconditionally revoked by the decedent and states that that instrument remains the valid and existing last will and testament of the decedent.

(c) She admits the allegations of paragraph (c) of the petition.

8. She admits the allegations of paragraph 8.
9. She admits the allegations of paragraph 9.
10. She admits the allegations of paragraph 10.
11. She admits the allegations of paragraph 11.
12. She denies the allegations of paragraph 12.

Further answering, this Executrix says that she is willing that issues may be framed and tried before a jury as by law provided in order that the truth of the allegations of the aforesaid caveat and the caveat of

208 this Executrix heretofore filed herein may be properly determined.

/s/ Catherine Gunzbourg Gurney

/s/ Henry H. Brylawski

* * *

Attorney for Petitioner

COUNTY OF NEW YORK)
STATE OF NEW YORK) ss:

Catherine Gunzbourg Gurney of New York, New York, being first duly sworn on oath according to law deposes and says that she has read the foregoing petition by her subscribed, that she knows the contents thereof, and that the matters and things therein stated are true of her own knowledge except as to matters and things therein stated to be alleged upon information and belief, and that as to those matters and things she verily believes them to be true.

/s/ Catherine Gunzbourg Gurney

[JURAT]

[Certificate Of Mailing]

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218 [Filed February 11, 1957]

ANSWER TO AMENDED PETITION FOR CAVEAT TO AMENDED PETITION FOR PROBATE AND ANSWER TO AMENDED CROSS PETITION FOR PROBATE AND FOR LETTERS OF ADMINISTRATION

Answer To Amended Petition For Caveat

To Amended Petition for Probate

Comes now Eugene Corrao, the executor named in the last will and testament executed during the year 1953 by Paul M. Gunzbourg, deceased, and offered for probate and record in this Honorable Court on the 30th day of June 1954, and for Answer To The Answer To Amended Petition For Caveat To Amended Petition For Probate filed herein by Maxim J. Gurney states as follows:

1. Eugene Corrao admits the allegations contained in paragraph 1.

2. Answering the allegations contained in paragraph 2, Eugene Corrao states as follows:

a) He admits that Maxim Gurney is a nephew of the decedent, Paul M. Gunzbourg.

b) He is without sufficient information or knowledge to form an opinion whether the said Maxim Gurney is the sole heir and
219 next of kin of the decedent Paul M. Gunzbourg, and, therefore, he neither admits nor denies the allegation. Accordingly, strict proof of the said allegation is hereby demanded.

3. Eugene Corrao denies the allegations contained in paragraph 3.

4. Answering the allegations contained in paragraph 4 Eugene Corrao states as follows:

(a) He denies the allegations contained in paragraph 4(a), and states that the last Will and Testament executed by the decedent, Paul M. Gunzbourg, during the year 1953, with the month and day left blank, and offered for probate and record in this Honorable Court by petitioner, Eugene Corrao, on the 30th day of June, 1954, is the last Will and Testament of the decedent, Paul M. Gunzbourg; and the said written instrument was intended by the decedent, Paul M. Gunzbourg, to be his last Will and Testament.

(b) He denies the allegations of paragraph 4(b).

(c) In answer to the allegations of paragraph 4(c) he denies the allegations contained in paragraph 4(c)(1) and paragraph 4(c)(2).

5. Answering the allegations contained in paragraph 5 he denies the allegations contained in paragraph 5. Further answering the allegations contained in paragraph 5 he states as follows:

(a) He denies the allegations contained in paragraph 5(a).

(b) He denies the allegations contained in paragraph 5(b).

220 (c) He denies the allegations contained in paragraph 5(c).

Answer To Petition For Letters of Administration

Comes now, Eugene Corrao, the executor named in the last Will and Testament executed during the year 1953 by Paul M. Gunzbourg, deceased, and offered for probate and record in this Honorable Court

on the 30th day of June, 1954, and for answer to the Amended Petition For Letters of Administration filed herein by Maxim J. Gurney states as follows:

1. Answering the allegations contained in paragraph 1 he states that he is without sufficient information or knowledge to form an opinion whether the said Maxim J. Gurney is a citizen of the United States, and a resident of New York, and is over twenty-one (21) years of age, and, therefore, he neither admits nor denies the said allegations. However, strict proof of the said allegations is hereby demanded.

2. He admits that the said Maxim J. Gurney is a nephew of the decedent, Paul M. Gunzbourg. However, he is without sufficient information or knowledge to form an opinion whether the said Maxim J. Gurney is the sole heir and next of kin of the decedent, Paul M. Gunzbourg, and, therefore, he neither admits nor denies the said allegation. Accordingly, strict proof of the allegation is hereby demanded.

3. He admits the allegations contained in paragraph 3.

4. He admits the allegations contained in paragraph 4.

5. He denies the allegations contained in paragraph 5. Further answering the allegations of paragraph 5 he alleges that the written instrument executed during the year 1953 by Paul M. Gunzbourg, deceased, and offered for probate and record in this Honorable Court on the 30th day of June, 1954, by petitioner, Eugene Corrao, is the valid

221 and existing last Will and Testament of Paul M. Gunzbourg, deceased.

6. Answering the allegations contained in paragraph 6 Eugene Corrao states as follows:

(a) He admits that with respect to three of the written instruments found among decedent's effects in the nature of a testamentary disposition, and filed in this Honorable Court on the 30th day of June 1954 by your petitioner, Eugene Corrao, the first is dated February 11, 1943; that the second of the said written instruments is dated June 8, 1951, and that the third of the said written instruments is dated the _____ day of February, 1952.

(b) He denies that the fourth of the said written instruments found among decedent's effects in the nature of a testamentary disposition, and offered for probate and record in this Honorable Court on the 30th day of June 1954 by your petitioner, Eugene Corrao, is undated. Further answering the said allegation contained in paragraph 6, he states that the said written instrument was executed and dated by the decedent, Paul M. Gunzbourg, during the year 1953, and the month and day only were left blank.

7. Answering the allegations of paragraph 7 Eugene Corrao states as follows:

(a) He admits the allegations contained in paragraph 7(a) that the instrument dated February 11, 1943, and June 8, 1951, were expressly revoked by the last Will and Testament dated the _____ day of February 1952.

222 (b) He admits the allegations of paragraph 7(b) that the instrument dated the _____ day of February 1952 was unconditionally revoked by the decedent, Paul M. Gunzbourg. Further answering the said allegations he states as follows:

(1) The decedent, Paul M. Gunzbourg, clearly intended to revoke as a last Will and Testament the paper writing bearing date the ____ day of February 1952. His intention to revoke the said paper writing bearing date the ____ day of February 1952 is clearly manifested by the words written across the first page of the said paper writing in the decedent's own handwriting, namely, to wit: "Superseded by a new testament." The said paper writing is on file in this Honorable Court.

(2) Having a new Will and Testament prepared materially changing the provisions thereof compared to the previous paper writings of a testamentary character, and the due execution of the said instrument during the year 1953 which instrument contains among other things a clause specifically revoking all other wills and codicils previously executed by the

decedent, Paul M. Gunzbourg.

(c) He denies the allegations contained in paragraph 7(c). Further answering the said allegations, he states that the written instrument executed during the year 1953 by Paul M. Gunzbourg, deceased, was validly and duly executed by the
223 decedent, Paul M. Gunzbourg, and that the said decedent, Paul M. Gunzbourg, executed the said written instrument intending it to be his last Will and Testament.

8. Eugene Corrao is without sufficient information and knowledge to either admit or deny the allegations contained in paragraph 8. Accordingly, he demands strict proof of the said allegations.

9. Eugene Corrao admits the allegations contained in paragraph 9.

10. Eugene Corrao admits the allegations contained in paragraph 10. With respect to the personal property in Belgium and France reportedly left by decedent as alleged in paragraph 10, he is without information or knowledge.

11. Answering the allegations contained in paragraph 11, Eugene Corrao states that to his best information and knowledge the decedent Paul M. Gunzbourg, left debts, including funeral expenses and expenses connected with decedent's last illness, amounting to approximately three thousand five hundred ($3,500.00) dollars.

12. He denies the allegations contained in paragraph 12.

Wherefore, the premises considered, the petitioner, Eugene Corrao, respectfully prays:

1. That issues may be framed, to be tried by a jury, requiring the petitioner, Maxim J. Gurney, to prove, preliminarily, that each of the last Wills and Testaments executed by the decedent, Paul M. Gunzbourg, the one dated the 11th day of February, 1943, the one dated the 8th day of June, 1951, the one dated the ____ day of February, 1952, and the one executed during the year 1953 is not the legally valid last Will and Testament of the decedent, Paul M. Gunzbourg.

224 2. That letters of administration be refused to petitioner, Maxim J. Gurney, and that he be refused permission to qualify as administrator

of the Estate of Paul M. Gunzbourg, deceased.

3. That a disinterested collector or collectors of the Estate of Paul M. Gunzbourg, deceased, may be appointed to serve under bond until the termination of this proceeding.

4. For such other and further relief as the nature of the case may require and to this Honorable Court may seem just and proper.

/s/ Eugene Corrao
Petitioner

AULETTE, DAVIS, OGDEN
LEONARD & CERVERA

By /s/ Charles L. Aulette
Associations Building
1145 Nineteenth St., N. W.
Washington 6, D. C.
Attorney for Petitioner

COUNTY OF NEW YORK)
) SS:
STATE OF NEW YORK)

Eugene Corrao, of Brooklyn, New York, being first duly sworn on oath according to law deposes and says that he has read the foregoing pleadings by him subscribed, that he knows the contents thereof, and that the matters and things therein stated are true of his own knowledge except as to matters and things therein stated to be alleged upon information and belief and that as to those matters and things he verily believes
225 them to be true.

/s/ Eugene Corrao

[JURAT]

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209 [Filed February 11, 1957]

ANSWER TO ANSWER AND OBJECTIONS TO AMENDED PETITION FOR PROBATE AND TO AMENDED CROSS PETITION FOR PROBATE OF FEBRUARY 1952 WILL

Answer To Answer To Amended Petition for Probate

Comes now, Eugene Corrao, the executor named in the last Will

and Testament executed during the year 1953 by Paul M. Gunzbourg, deceased, and offered for probate and record in this Court on the 30th day of June, 1954, and for Answer to the Answer To Amended Petition For Probate filed herein by Catherine Gunzbourg-Gurney states as follows:

1. The answer and objections filed herein by Catherine Gunzbourg-Gurney to the amended petition for probate filed by Eugene Corrao is in fact and in law a petition for caveat.

2. The said Catherine Gunzbourg-Gurney has no standing in this Court to contest the last Will and Testament of Paul M. Gunzbourg, deceased, executed by the decedent during 1953 and offered for probate and record in this Court on the 30th day of June, 1954, for the reason that she has not shown nor established in the caveat, and it does not appear from the record that she has any legal or sufficient interest to contest the said last Will and Testament of Paul M. Gunzbourg, deceased,
210 and by such caveat to pray for denial of probate and admission to record of the said last Will and Testament of the decedent.

3. The said Catherine Gunzbourg-Gurney's asserted right to contest the last Will and Testament of the decedent executed by the decedent during 1953 arises by virtue of an alleged prior will bearing date the ____ day of February, 1952. However, the said Catherine Gunzbourg-Gurney has not alleged in the caveat to the amended petition of Eugene Corrao the due execution of the said alleged prior will, and that the said alleged prior will remained the last will and testament of the decedent until his death, except for the effect of the subsequent will, if valid, to revoke it.

4. Further answering the answer and objections filed herein by the said Catherine Gunzbourg-Gurney to the amended petition filed by Eugene Corrao, the said Eugene Corrao states as follows:

(a) Answering the allegations of paragraph numbered 1 of Catherine Gunzbourg-Gurney's answer and objections to the amended petition for probate states:

(1) Respondent is without information or knowledge concerning the residence and citizenship of Catherine Gunzbourg-Gurney and therefore neither admits nor denies the said allegation, but if material to this proceeding demands strict proof thereof.

(2) Respondent admits that Catherine Gunzbourg-Gurney is an adult.

(3) Respondent admits that Catherine Gunzbourg-Gurney is a beneficiary under a paper writing purporting to be a last will
211 and testament of Paul M. Gunzbourg, deceased, bearing date the ____ day of February, 1952; however, respondent avers that the said paper writing bearing date the ____ day of February 1952 was specifically and deliberately revoked as a last will and testament by the said Paul M. Gunzbourg, deceased, and that the said revocation was intentional on the part of the decedent, and that the decedent intended to establish a new and different last will and testament to supersede the paper writing bearing date the ____ day of February, 1952, and that the decedent carried out his intention by executing a new last will and testament in 1953.

(4) Respondent admits that Catherine Gunzbourg-Gurney is one of the persons named executrix in the paper writing bearing date the ____day of February, 1952, and that she is a beneficiary under the said paper writing purporting to be a last will and testament.

(b) Answering the allegations of paragraph numbered two of the answer of Catherine Gunzbourg-Gurney to the amended petition of Eugene Corrao, the said Eugene Corrao states as follows:

(1) Eugene Corrao denies the allegations contained in paragraph numbered 2A that the paper writing executed during the year 1953 is not the last will and testament of Paul M. Gunzbourg. Eugene Corrao further denies that the said paper writing executed during 1953 was not executed in fact

212 by Paul M. Gunzbourg and was not executed in the manner required by the Laws of the District of Columbia.

(2) Eugene Corrao denies the allegations contained in paragraph 2B that the attesting witnesses did not sign in each others presence and on the same date.

(3) Eugene Corrao denies the allegations contained in paragraph numbered 2C that the signature of the decedent Paul M. Gunzbourg appearing on the carbon copies of the paper writing executed during 1953 were not placed thereon with intention that they should constitute execution as a last will and testament of the said paper writing executed during 1953. Eugene Corrao further denies all the allegations contained in the paragraphs numbered 2C (1), (2), (3), and (4).

(4) Eugene Corrao denies the allegations contained in paragraph numbered 2D that decedent's omission to sign the original "ribbon" copy of the paper writing executed during 1953 was deliberate.

(c) Answering the allegations of paragraph numbered 3 of the answer of Catherine Gunzbourg-Gurney to the amended petition of Eugene Corrao, the said Eugene Corrao states that he is without information or knowledge with regard to the manner and the time that the said Catherine Gunzbourg-Gurney alleges she affixed her signature on the paper writing executed during 1953 and therefore neither admits nor denies those allegations but demands strict proof thereof.

213 Amended Petition For Caveat To Amended Cross-Bill For Probate of Will Dated February - -, 1952.

The amended petition for caveat of Eugene Corrao to the amended cross-bill filed herein by Catherine Gunzbourg-Gurney for probate of the paper writing bearing date February ____, 1952, respectfully represents to this Honorable Court as follows:

1. Peitioner, Eugene Corrao, is an adult citizen of the United States, and a resident of Brooklyn, New York, that he is the person

nominated by Paul M. Gunzbourg, deceased, as executor of his last will and testament, executed during the year 1953.

2. Petitioner, Eugene Corrao, is the executor named in the last will and testament executed during 1953 by Paul M. Gunzbourg, deceased, and that the said last will and testament of the decedent remained the last will and testament of the testator until his death.

3. Petitioner, Eugene Corrao, has notice that Catherine Gunzbourg-Gurney has filed an amended cross-bill seeking to have admitted to probate as the last will and testament of Paul M. Gunzbourg, a paper writing bearing date the ____ day of February, 1952, which paper writing is now on file in this Court.

4. Petitioner Eugene Corrao's interests will be injuriously affected by the allowance of the said pretended last will and testament, or its admission to probate; that he hereby contests the probate and the validity of said paper writing purporting to be the last will and testament of Paul M. Gunzbourg, deceased, on the following grounds which appear from the record herein:

A. That the said paper writing bearing date the ____ day of February, 1952, is not the last will and testament of the said
214 decedent, Paul M. Gunzbourg, for the following reasons:

(1) The said paper writing bearing date the ____ day of February, 1952, purporting to be the last will and testament of the said decedent, Paul M. Gunzbourg, was specifically revoked by the provisions of the last will and testament executed by the said decedent Paul M. Gunzbourg during 1953.

(2) The said decedent, Paul M. Gunzbourg, clearly intended to revoke as a last will and testament the paper writing bearing date the ____ day of February 1952. His intention to revoke the said paper writing bearing date the ____ day of February, 1952, is clearly manifested by the words written across the first page of the said paper writing in the decedent's own handwriting, namely, to wit: "Superceded by a new testament."

(3) Having a new will and testament prepared materially changing the provisions thereof compared to the previous paper writings of a testamentary character, and the due execution thereof.

B. That the attesting witnesses to the paper writing bearing date the ____ day of February, 1952, purporting to be a last will and testament did not, nor did any one of them sign his or her name as a witness to the said paper writing bearing date the ____ day of February, 1952, at the request and in the presence of the decedent, Paul M. Gunzbourg.

5. Petitioner, Eugene Corrao, is advised that a period of at least several months will elapse before a determination of the issues to
215 be framed upon the caveat can be had, and petitioner, Eugene Corrao, accordingly states that a collector or collectors should be appointed to collect, conserve, and administer the assets of the estate of the decedent, pending the conclusion of this litigation.

WHEREFORE, the premises considered, petitioner, Eugene Corrao, respectfully prays:

1. That issues may be framed, to be tried by a jury, requiring the caveator to prove, preliminarily, that the paper writing bearing date the ____ day of February, 1952, purporting to be a last will and testament of Paul M. Gunzbourg, deceased, remained the last will and testament of the testator until his death, except for the effect of the subsequent last will and testament, that is, the last will and testament executed by the decedent in 1953, if valid, to revoke the paper writing bearing date the ____ day of February, 1952.

2. That the paper writing bearing date the ____ day of February, 1952, may be refused probate and admission to record as the last will and testament of Paul M. Gunzbourg.

3. That issues may be framed to be tried by a jury to determine the facts with respect to the execution and the validity of the paper writing bearing date the ____ day of February, 1952.

4. That letters of collection be denied to petitioner Catherine Gunzbourg-Gurney upon the estate of Paul M. Gunzbourg, deceased.

5. That a disinterested collector or collectors of the Estate of Paul M. Gunzbourg, deceased, may be appointed to serve under bond until the termination of this proceeding.

216 6. For such other and further relief as to the Honorable Court may seem meet and proper.

/s/ Eugene Corrao
Petitioner

AULETTE, DAVIS, OGDEN,
LEONARD & CERVERA

By /s/ Charles L. Aulette
Attorney for Petitioner

* * * *

COUNTY OF NEW YORK)
) SS:
STATE OF NEW YORK)

Eugene Corrao, of Brooklyn, New York, being first duly sworn on oath according to law deposes and says that he has read the foregoing pleadings by him subscribed, that he knows the contents thereof, and that the matters and things therein stated are true of his own knowledge except as to matters and things therein stated to be alleged upon information and belief, and that as to those matters and things he verily believes them to be true.

/s/ Eugene Corrao

[JURAT]

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226 [Filed February 20, 1957]

ORDER AMENDING ORDER
FRAMING ISSUES AND FIXING NEW TRIAL DATE

Upon the motion of the parties hereto to amend the Order of the Court dated the 23rd day of October, 1956, which framed issues in this proceeding, it is by the Court, this 20th day of February, 1957,

ORDERED, that the Order framing issues dated the 23rd day of October, 1956, be, and the same is hereby amended to read as follows:

AMENDED ORDER FRAMING ISSUES

Upon consideration of the caveat of Maxim J. Gurney, filed against certain typewritten documents, the first bearing date of the _____ day of February, 1952, and the second undated but marked "1953", and upon consideration of the caveat of Catherine Gunzbourg-Gurney, filed against a certain typewritten document which is undated but marked "1953", all of which documents are on file herein and purport to be the last wills and testaments of Paul M. Gunzbourg, deceased, and of the answers of Catherine Gunzbourg Gurney and of Eugene Corrao filed thereto, it is by the Court this 20th day of February, 1957,

ORDERED, that the following issues be and they are hereby framed to be tried before a jury on the 20th day of March, 1957:

227

AS A PRELIMINARY ISSUE

Was the will dated the day of February, 1952, on file herein, properly executed, and did it remain the last will and testament of Paul M. Gunzbourg, deceased, until his death, except for the effect of the subsequent will, if valid, to revoke it?

AS REGULAR ISSUES

ONE: Was said typewritten document dated the day of February, 1952, on file herein, the last will and testament of Paul M. Gunzbourg, deceased?

TWO: Was said typewritten document dated the day of February, 1952, revoked as a last will and testament of Paul M. Gunzbourg, deceased?

THREE: Was the undated typewritten document marked "1953", on file herein, intended by Paul M. Gunzbourg, deceased, to be his last will and testament?

FOUR: Was said undated typewritten document executed, subscribed and attested in due form, as required by the laws of the District of Columbia?

FIVE: Was said undated typewritten document the last will and testament of Paul M. Gunzbourg, deceased?

/s/ Pine
Judge

I Consent:

/s/ Ira S. Siegler
* * *
Attorney for Maxim J. Gurney

/s/ Charles L. Aulette
* * *
Attorney for Eugene Corrao

/s/ Henry H. Brylawski
* * *
Attorney for Catherine Gunzbourg Gurney

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229 [Filed June 26, 1957]

PETITIONER, EUGENE CORRAO'S INSTRUCTION NO. 3

You are instructed as a matter of law that there is a presumption of law that a Will has been executed in accordance with the requirements of law. You are further instructed that the appearance of decedent's signature at the bottom margin of pages 1 and 2 of exhibits 1 a and 1 b establishes a prima facie case of decedent's intention to place his name there to effectuate his Will. Thus, in the absence of clear and satisfactory evidence produced by the oponents of the 1953 Will that Paul M. Gunzbourg when he placed his signature at the bottom margin of pages 1 and 2 of exhibits 1 a and 1 b did not intend such signature to effectuate his Will, your verdict will be in favor of the 1953 Will. Betts v. Lonas, 84 U.S. App. D.C. 206; 172 F. (2) 759; Ex Parte Cardoza, 135 Md 407; 109 Atl 93; 221 Mich 430, 191 N.W. 238; and numerous cases there cited and analyzed.

Denied
Pine
J.

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230 [Filed June 26, 1957]

PETITIONER EUGENE CORRAO'S INSTRUCTION NO. 5

You are instructed as a matter of law that the burden of proving by a fair preponderance of the evidence that when Paul M. Gunzbourg placed his signature at the bottom margin of pages 1 and 2 of Exhibits 1 a and 1 b he did not do so with intention of effectuating his will is upon the opponents of the 1953 will.

Denied
Pine
J.

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243 [Filed July 19, 1957]

ORDER AND DECREE UPON VERDICT GRANTING PROBATE TO WILL DATED FEBRUARY 1952 AND DENYING PROBATE TO WILL MARKED "1953"

The preliminary issue framed in this proceeding upon the caveats and the answers thereto, having been tried in open court, and the jury having, by direction of the Court, answered said preliminary issue in the affirmative, and by stipulation of the parties a special interrogatory having been duly submitted to the jury for determination in lieu of the five regular issues framed herein, and the said jury on June 26, 1957 having answered the special interrogatory, to wit:

"Was the will marked '1953' duly executed by the decedent in accordance with the requirements of law?"

in the negative, and the jury thus having found upon their answers to the preliminary issue and to the special interrogatory under the regular issues that the paper writing bearing date the (blank) day of February, 1952, is the last will and testament of Paul M. Gunzbourg, deceased, and upon consideration of the petition previously filed by Catherine Gunzbourg-Gurney for probate and letters testamentary, and further upon consideration of the attested renunciation of Maxim J. Gurney renouncing all his right, title and interest as a nominated co-executor under said will, it is by the Court, this 19th day of July

244 1957,

Adjudged, Ordered and Decreed, that the said will of Paul M. Gunzbourg, deceased, dated the (blank) day of February, 1952, be and the same is hereby admitted to probate and record as a will of both real and personal property without regard to the pencilled writing superimposed on page one thereof reading "Superceded by a new testament", and that letters testamentary thereunder be and they are hereby granted and shall issue to Catherine Gunzbourg-Gurney, the co-executrix named in said will, provided she first files her undertaking in the penal sum of six thousand dollars ($6,000.00) with surety approved by the Court,

conditioned for the faithful performance of her trust and provided she files the power of attorney required of non-residents; and it is further

Adjudged, Ordered and Decreed, that the prayers of the petition of Eugene Corrao for probate and record of the paper writing marked "1953" filed in this proceeding purporting to be the last will and testament of Paul M. Gunzbourg, deceased, be and are hereby denied, and that said paper writing marked "1953" purporting to be the last will and testament of Paul M. Gunzbourg, deceased, be and the same is hereby denied probate.

/s/ Pine
Judge

Seen and Objected to
/s/ Charles L. Gulotta
Attorney for Eugene Corrao

236 [Filed July 9, 1957]

PETITION FOR LETTERS OF COLLECTION

The petition of, Eugene Corrao, respectfully represents to this Honorable Court as follows:

1. Petitioner has heretofore on the 30th day of June 1954 filed a petition herein for admission to probate and record of a certain paper writing dated in 1953, as the Last Will and Testament of Paul M. Gunzbourg, deceased, and for the issuance of letters testamentary to your petitioner as the executor nominated in the said paper writing. Thereafter, on the 17th day of March, 1955, Catherine Gunzbourg-Gurney the nominated executrix by virtue of the provisions of a paper writing executed by the said Paul M. Gunzbourg, deceased, at an earlier date, and on the 13th day of April 1956, Maxim J. Gurney, the sole surviving heir at law and next of kin of the said decedent, each in their separate capacities filed petitions for a Caveat alleging that the testamentary paper writing of the said decedent dated in 1953 is not the last Will and Testament of the said decedent, because of various matters charged in the said petition for Caveat, and on the 13th day of June, 1955, and on the

237 21st day of September 1956, respectively petitioner filed answers to the said Caveats denying the allegations set out in the said Caveats. Thereafter, there were filed amended petitions, caveats, and answers,

and there were also further proceedings.

2. As shown by the petition for probate of will and for letters testamentary filed by petitioner on the 30th day of June 1954, decedent, Paul M. Gunzbourg, died seized of real estate situated in Russia, and personal property in the District of Columbia, in New York, New York, and in London, England estimated at approximately twenty thousand dollars ($20,000.00), consisting of money on deposit in banks, securities, jewelry, antique furniture and paintings. Upon information and belief petitioner believes that the said personal property has appreciated greatly in value. Petitioner's said petition further shows that decedent left debts, including funeral expenses and expenses connected with decedent's last illness amounting to approximately three thousand five hundred dollars ($3,500.00).

3. Petitioner is advised and believes that it will not be possible to obtain final and definitive determination of the issues raised by the Caveats referred to in paragraph numbered 1 hereof, for a considerable period of time. In the meantime the assets of the estate have appreciated and will continue to appreciate, and certain debts of the estate should be paid.

4. Petitioner is advised and therefore avers that it will be to the best interests of the parties having an interest in decedent's estate to have a collector appointed with power to take possession of, hold, manage, conserve, control and to collect the personal property set forth in paragraph numbered 2 hereof, and with power to discharge all of the duties of an administrator pendente lite as provided by law.

238 Wherefore, the premises considered, petitioner respectfully prays:

1. That the Court grant letters of collection to petitioner upon the estate of Paul M. Gunzbourg, deceased.

2. For such other and further relief as the nature of the case may require and to this Honorable Court shall appear just and proper.

AULETTE, DAVIS, OGDEN,
LEONARD, & CERVERA

By: /s/ Charles L. Aulette
Attorney for Petitioner

/s/ Eugene Corrao
Petitioner

* * *

County of New York)
State of New York) ss

I, Eugene Corrao, of Brooklyn, New York, after being duly sworn on oath according to law depose and say, that I am the petitioner in the foregoing Petition For Letters of Collection by me subscribed, that I have read the said petition, that I know the contents thereof, and that the matters and things therein stated are true of my own knowledge except as to matters and things therein stated to be alleged upon information and belief, and that as to those things I verily believe them to be
239 true.

/s/ Eugene Corrao
Petitioner

[JURAT]

OBJECTIONS TO PETITION FOR LETTERS OF COLLECTION

The objections of Maxim J. Gurney and Catherine Gunzbourg-Gurney respectfully represent as follows:

1. Maxim J. Gurney is the sole heir at law and next of kin of Paul M. Gunzbourg, deceased, and is a legatee under and a co-executor named in the decedent's will dated February 1952.

2. Catherine Gunzbourg-Gurney is the principal legatee under and a co-executor named in the decedent's will dated February 1952. Catherine Gunzbourg-Gurney is the mother of Maxim J. Gurney and is the widow of the decedent's only brother.

3. Petitioner Eugene Corrao is not related to the decedent and has no interest in the decedent's estate under the decedent's will dated February 1952. Corrao's only purported interest in the decedent's estate is as the executor named in an unexecuted document which Corrao unsuccessfully offered for probate.

4. Corrao's petition herein fails to disclose the following pivotal fact: The issues in this proceeding recently were tried to a jury and were completely resolved against Corrao. On June 26, 1957, the jury

returned its verdict that the document offered for probate by Corrao was not executed, and that the will marked February 1952 (under which Corrao has no interest) was the decedent's Last Will and Testament.

5. The decedent's estate will be administered by the decedent's family in accordance with the decedent's Last Will and Testament of February 1952 without delay, now that the caveat issues have been tried, and there is absolutely no need at this point for the appointment of Corrao or anyone else as a collector.

WHEREFORE, objectants respectfully pray that the petition be denied in all respects, and for such other and further relief as to this Honorable Court shall appear just and proper.

/s/ Ira S. Siegler
* * * *
Attorney for Maxim J. Gurney

/s/ Henry H. Brylawski
* * * *
Attorney for Catherine Gunzbourg-Gurney

Of Counsel:

Guggenheimer, Untermyer & Goodrich
607 Ring Building
Washington 6, D. C.

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242 [Filed July 19, 1957]

ORDER DENYING PETITION FOR LETTERS OF COLLECTION

Upon consideration of the petition for Letters of Collection filed herein by Eugene Corrao, and of the Points of Authorities filed in opposition to the said motion, and it appearing to the court that the Caveats previously filed herein have been resolved after trial and verdict by jury, that an order for Probate and Letters Testamentary is currently being signed by this Court pursuant to that trial and verdict, and that no further delay in administration of this estate should be experienced.

It is by the Court this 19th day of July, 1957, ordered that the petition for Letters of Collection filed herein by Eugene Corrao be, and the same is hereby denied.

/s/ Pine
Judge

Seen and objected to:

/s/ Charles L. Aulette
Attorney for Eugene Corrao

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248 [Filed August 14, 1957]

NOTICE OF APPEAL

Notice is hereby given this 14th day of August, 1957, that Eugene Corrao, plaintiff, in Will Contest, Admn. No. 85, 608, Estate of Paul M. Gunzbourg, Deceased hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 19th day of July, 1957 in favor of Catherine Gunzbourg-Gurney and Maxim J. Gurney against said Eugene Corrao denying probate to Will marked "1953", and also denying petition of Eugene Corrao for appointment of a collector of said estate.

AULETTE, DAVIS, OGDEN, LEONARD & CERVERA.

By: /s/ James A. Davis

and /s/ Charles L. Aulette
Attorneys for Plaintiff
Associations Building
1145 - 19th Street, N. W.
Washington 6, D. C.

Copies to:

Ira S. Siegler, Esquire
607 Ring Building
Washington 6, D. C.
Attorney for Maxim J. Gurney

\- - -

Henry H. Brylawski, Esquire
Woodward Building
Washington, D. C.
Attorney for Catherine Gunzbourg-Gurney

EXCERPTS OF TRANSCRIPT OF PROCEEDINGS

Washington, D. C.,

Monday, June 24, 1957.

The above-entitled matter came on for hearing before the HONORABLE DAVID A. PINE, United States District Judge, and a jury, at 10:00 o'clock a. m.

* * * * *

THE COURT:* * *

In this case, in view of the testimony that has been presented, I cannot see that there is any issue of fact on which reasonable men could differ and, therefore, on this preliminary issue which is before you now, I direct that you return a verdict of "Yes" to the question which has been propounded, namely, was the will dated the blank day of February, 1952, on file herein, properly executed and did it remain the last will and testament of Paul M. Gunzbourg, deceased, until his death except for the effect of the subsequent will, if valid, to revoke it.

Will you take the verdict, Mr. Clerk.

THE DEPUTY CLERK: Members of the jury, by direction of the Court, your verdict on the preliminary issue, namely, was the will dated the blank day of February, 1952, on file herein, properly executed and did it remain the last will and testament of Paul M. Gunzbourg, deceased, until his death except for the effect of a subsequent will, if valid, to revoke it, and your answer to this preliminary issue and question is "Yes." And this say you each and all, so help you God.

(The jurors nodded assent.)

* * * * *

MR. AULETTE: Mrs. Pahud, please, the first witness.

May it please the Court, as I explained to Your Honor, Mrs. Pahud does not speak English. She speaks French and Mr. Claude Badoux, who is her son and who is an official translator for the United States Department of State, is going to act as interpreter.

THE COURT: That is agreeable to all sides?

MR. BRYLAWSKI: We consent to that.

(Thereupon Claude Badoux was duly sworn as the interpreter.)

* * * * *

ADRIENNE PAHUD

* * * * *

DIRECT EXAMINATION

BY MR. AULETTE:

7 Q. Mrs. Pahud, will you give us your full name? A. Adrienne Pahud.

Q. Will you give us your present address? A. 2707 Adams Mill Road.

Q. How long have you lived at that address? A. Two years.

Q. Are you a permanent resident of the United States? A. Yes.

Q. What is your occupation at the present time? A. Practical nurse.

Q. Did you know Paul M. Gunzbourg before his death? A. Yes.

Q. Will you describe to the Court and jury the circumstances of how you knew him? A. I met him through a friend of his who asked me if I would take care of Mr. Gunzbourg who was at the time undergoing treatment at George Washington University Hospital.

Q. Did you undertake to take care of Mr. Paul M. Gunzbourg while undergoing treatment at George Washington University Hospital? A. No.

Q. Did you subsequently begin work for Mr. Paul M. Gunzbourg? A. Yes.

Q. When did you begin to work for him? A. September, 1952.

8 Q. How long did you remain in his employ? A. Until his death.

Q. When was his death? A. The 30th of May, 1954.

Q. Did you remain continuously in his employ during the period September 1952 to the time of his death? A. Yes.

Q. Will you describe the nature of your duties? A. I gave him treatments. I did his shopping. I was his housekeeper and took care of all of his household affairs, such as laundry, et cetera.

Q. What were the hours of your employment? A. I had two

different sets of hours. For the first months I took care of him I worked from 6:00 p.m. to 9:00 p.m., and after he moved to the place where he finally passed away, I worked from 8:00 o'clock in the morning until 10:00 or 11:00 at night.

Q. Mrs. Pahud, directing your attention to the month of February, 1954, did Mr. Gunzbourg ask you to get some papers from his desk? A. Yes.

Q. Can you tell us about what time in the month of February that was? A. In the middle of February.

9 THE COURT: 1953?

MR. AULETTE: 1954, Your Honor.

BY MR. AULETTE:

Q. Do you recall about what time of the day that was? A. It was about lunch time.

Q. Mrs. Pahud, when Mr. Gunzbourg asked you to get his papers, what terminology did he use? A. He asked me to get him his testament which was in a drawer of his desk.

Q. Did you get him his testament which was in the drawer of his desk? A. Yes.

Q. Can you tell us what that testament was in? A. In an envelope.

Q. Was there any writing on the envelope? A. It was written "Testament."

Q. Did you bring him the envelope? A. Yes.

Q. What did he do with the envelope after you gave it to him? A. As he needed my son as a witness, he waited until he came to give it to us.

Q. Did Mr. Gunzbourg ask you to witness his will?

MR. BRYLAWSKI: I object to the question, if Your Honor please. I think it is leading, No. 1, and I think counsel should ask the witness

10 what the decedent said.

THE COURT: I sustain the objection.

BY MR. AULETTE:

Q. When you gave Mr. Gunzbourg the will, what did the decedent say to you? A. In the morning, prior to my giving him the testament,

he asked me if I could ask the resident manager, Mrs. Wilcox, to be a witness to his will. I went to the desk and Mrs. Wilcox had her day off. Therefore, when I came back from the desk with his mail, I told him she would not be able to act as a witness. Therefore, he asked me if I could ask my son to be a witness.

I replied to him that he had just to call my son at the lunch hour, which he did.

Q. Mrs. Pahud, did Mr. Gunzbourg tell you what he wanted you and your son to be a witness to? A. He said I would like you to sign my testament. I only need two additional signatures.

Q. Did you, at the direction of Mr. Gunzbourg, go and look for your son? A. No, Mr. Gunzbourg called him on the phone.

Q. Who did he call? A. My son.

Q. Did you sign, as a witness, at the direction of Mr. Gunzbourg?

11 A. Yes.

Q. Did you sign in the presence of Mr. Gunzbourg? A. Yes.

Q. Did your son sign as a witness in your presence? A. Yes, we were all three.

Q. Did your son sign in the presence of Mr. Gunzbourg? A. Yes.

Q. Where was Mr. Gunzbourg when he asked you to sign the will as a witness? A. He was in his bed.

Q. Did you give him the envelope in his bed? A. Yes.

Q. About what time of the day did you give him the envelope? A. It was after I brought him his mail from the desk. It must have been late in the morning.

Q. Did he keep that envelope until he called you to sign it? A. Yes.

Q. Did he take the paper writing from the envelope and give it to you to sign?

MR. BRYLAWSKI: I must object, Your Honor.

THE COURT: I sustain the objection.

BY MR. AULETTE:

Q. What did Mr. Gunzbourg do at the time he asked you to sign as

12 a witness? A. He simply gave us the papers.

Q. Did he tell you what those papers were? A. Yes, he said, "This is my testament."

MR. AULETTE: May it please the Court, I request that these three copies of a will or at least a paper writing purporting to be a will dated in 1953 be admitted in evidence.

THE COURT: You might ask the witness whether those are the papers she signed on the occasion in question and that would identify them.

BY MR. AULETTE:

Q. I will show you these papers and ask you whether these are the papers that you signed. A. Yes.

Q. Did you sign all three of them? A. Yes.

THE COURT: They may be marked Plaintiff's Exhibit 1, 1-A and 1-B.

(Copies of will were marked Plaintiff Corrao's Exhibits 1, 1-A and 1-B for identification and received in evidence.)

* * * * *

13 BY MR. AULETTE:

Q. Mrs. Pahud, I am going to show you paper writings that purport to be a will and then I wish to ask you some questions about them.

THE COURT: Can you use the exhibit numbers for the record?

MR. AULETTE: Yes.

BY MR. AULETTE:

Q. In the upper left-hand margin of Exhibit No. 1, there is some writing. Can you identify the writing? A. Yes.

MR. BRYLAWSKI: I would like to see what she is referring to, if Your Honor please.

Mr. Aulette, these are Exhibits 1, 1-A and 1-B and you refer to 1?

MR. AULETTE: I said 1-B. I said Exhibit 1-B and 1-A. That

14 is Exhibit 1-A and 1-B.

THE WITNESS: Yes.

BY MR. AULETTE:

Q. Whose handwriting was that? A. It is Mr. Gunzbourg's handwriting.

Q. How do you know that it is his handwriting? A. Because I see him write a lot and I received two checks every week, one for my salary and one for my household expenses.

Q. How often were you paid? A. Every week -- every month.

Q. Did Mr. Gunzbourg pay you in cash? A. No, by check.

Q. Did he sign those checks? A. Yes.

Q. In the upper left-hand margin of Plaintiff's Exhibit 1-A, what appears to be a signature, can you identify the signature? A. Yes, very well.

Q. Whose signature is it? A. It is Mr. Gunzbourg's handwriting.

Q. Whose signature is it? A. It is his signature.

Q. By "his," whom do you mean? A. Mr. Gunzbourg's signature.

Q. Is that the usual customary signature that he used? A. I can say very often.

Q. In the lower left-hand margin of Plaintiff's Exhibit No. 1, there is what purports to be a signature. Do you recognize whose signature that is?

MR. BRYLAWSKI: May I interrupt? I think counsel referred to Plaintiff's Exhibit No. 1. Did you not refer to page 1 of Exhibit 1-A, the lower left-hand corner?

THE WITNESS: Yes.

BY MR. AULETTE:

Q. Whose signature is it? A. Mr. Gunzbourg's signature.

Q. Will you turn to page 2 of Plaintiff's Exhibit 1-A.

In the upper left-hand margin, there is some writing. Can you identify whose writing it is? A. Mr. Gunzbourg's.

Q. Directing your attention to the bottom of page 2 of Plaintiff's Exhibit 1-A, to what purports to be a signature, can you identify whose signature that is? A. The same, but it all depended on how he felt with his hand because his signatures were not always the same.

Q. Do you recognize it to be the signature of Mr. Gunzbourg?
A. Absolutely.

Q. Mrs. Pahud, directing your attention to Plaintiff's Exhibit
16 1-B, in the upper left-hand margin, there is some writing. Can you identify whose writing it is? A. The same, Mr. Gunzbourg's.

Q. Underneath the writing, there is what purports to be a signature. Can you identify whose signature it is? A. Yes, Mr. Gunzbourg's.

Q. Directing your attention to the bottom of page 1 of Plaintiff's Exhibit 1-B, to what purports to be a signature, do you recognize whose signature that is? A. Yes, the same. Mr. Gunzbourg.

Q. Turn to page 2. In the upper left-hand margin, there is some writing. Can you identify the writing? A. Mr. Gunzbourg himself.

Q. Beneath the writing is a signature. Do you recognize the signature? A. Yes, the same thing.

Q. By the same thing, whose signature do you mean? A. Mr. Gunzbourg's signature.

Q. Directing your attention to the bottom of page 2 of Plaintiff's Exhibit 1-B, do you recognize the signature? A. Yes, it is the same handwriting. It is Mr. Gunzbourg's.

Q. Is it Mr. Gunzbourg's signature? A. Yes.

* * * * *

21 CROSS EXAMINATION

BY MR. SIEGLER:

Q. Madame Pahud, I show you a document which purports to be a will dated 1951, the 8th day of June, 1951, and on page 5 I ask you whether you can identify the signature appearing first on the page?
A. Yes, it is Mr. Gunzbourg's.

* * * * *

Q. Madame Pahud, you have identified the signature on pages 1 and 2 of Exhibits 1-A and 1-B as being those of the decedent, is that correct? A. Yes.

Q. Were you present when those signatures were put on those two documents? A. I was present but in the evening he remarked that,

as I refilled his fountain pen, that he had had to make corrections; that
22 in spelling my name Mr. Corrao had made a mistake in writing it.

Q. Madame Pahud, do you recall approximately what time that occurred in terms of the year and the month? A. It was in September, the month after we received the testament.

Q. Madame Pahud, who received the testament? Can you explain that? A. Mr. Gunzbourg received the testament. It was sent by Corrao from New York.

Q. Approximately how long before the day on which the decedent wrote on the will did they come in the mail? A. Not too long, perhaps two or three weeks, later.

Q. Madame Pahud, after that day in September when the testator put the mark on Exhibits 1-A and 1-B, did you ever again, in the succeeding nine months until he died, see him write on those testaments? A. No.

Q. Madame Pahud, I ask you again whether you saw these marks on pages 1 and 2 of Exhibits 1-A and 1-B that day in September? A. Yes.

Q. I wonder whether you could make a distinction between seeing the marks themselves on the one hand and being able to recognize them as the signatures on the other hand? My question was whether she saw
23 the marks.

THE COURT: By marks, do you mean the writing?

MR. SIEGLER: Yes, the writings on pages 1 and 2.

THE WITNESS: Yes; I can answer yes to both questions.

THE COURT: That is not very clear to me.

MR. SIEGLER: No, it isn't. I wonder if we shouldn't cross check her answer by asking the question again.

THE COURT: All right.

BY MR. SIEGLER:

Q. Do I understand you correctly, Madame Pahud, you say that that day in September you saw the marks on pages 1 and 2 of Exhibits 1-A and 1-B? A. Yes, I saw the handwriting but I can't tell the number of the pages, the page number.

Q. Madame Pahud, did you see the handwriting on pages 1 and 2 of Exhibits 1-A and 1-B? A. Yes.

Q. You saw the handwriting on page 2? A. Yes.

Q. Madam Pahud, was anyone else present on that day in September when the decedent wrote on pages 1 and 2 of the carbon copies? A. No; he was alone and he had started making the corrections before I went out to do the shopping and he had finished when I returned from shopping as I had to refill his fountain pen then.

24 THE COURT: Do I understand all of this took place in September of 1953?

THE WITNESS: Yes, Your Honor.

* * * * *

Q. Madame Pahud, on the day that you saw the decedent putting his signature on pages 1 and 2 of the carbon copies, did he tell you he was making corrections? A. Yes; clearly.

Q. Madame Pahud, you have thus far testified to events that occurred on that day in September. I would like you now to address your attention to events which occurred after the day that you saw him putting his signature in the margins.

Madame Pahud, you have testified that you worked for the decedent and you were with him almost every day, is that not correct? A. Yes.

Q. Madame Pahud, at any time after the day on which the decedent made the corrections on Exhibits 1-A and 1-B, did he ask you to remind him to sign this will? A. Yes.

25 Q. Do you recall how many times he asked you to remind him to sign his will? A. Twice or three times.

Q. Do you recall when the first time was? A. That was after he had made the corrections.

Q. Do you recall approximately how long after he had made the corrections that the first time was? A. No, I don't remember.

Q. Do you recall approximately what the decedent said on that first occasion? A. Every time he reminded me of the same thing, he would say, "Remind me tomorrow I must sign my testament."

Q. Do you remember, on the day following his instructions to you, that he should sign his will, did you remind him? A. No; never.

Q. May I ask you why you failed to remind him? A. Because these tomorrows or the following days he was never in a good mood and I was afraid to remind him for fear he thought that I might be interested.

Q. Madame Pahud, you have testified that on two and possibly three occasions after he put his mark on pages 1 and 2 of the carbons, he told you to remind him to sign his will on the following day. Can you recall when the last time was? A. It must have been between Christmas and New Year's Day.

26 Q. Madame Pahud, do you know Alexander Saitzoff? A. Yes, I know him because he was a friend of Mr. Gunzbourg.

Q. Do you know his wife? A. Yes; they came together.

Q. Madame Pahud, did you ever tell Mrs. Saitzoff on the telephone that the decedent will not sign his will? I have reminded him but he will not sign his will, or words to that effect?

MR. AULETTE: I object to the words "to that effect." Let him ask specific questions so the jury may know what we are talking about.

THE COURT: Overruled.

THE WITNESS: No, sir, I don't remember.

* * * * *

CROSS EXAMINATION

BY MR. BRYLAWSKI:

Q. Madame Pahud, you have testified that you know Mr. and Mrs. Saitzoff, do you not? A. Yes.

Q. And is it a fact that they were visitors at Mr. Gunzbourg's home? A. Yes.

Q. And during those visits, were you sometimes present when conversations occurred between the Saitzoffs and Mr. Gunzbourg?

27 A. Yes, but they were talking Russian together and if they addressed me in French, it was only about questions about my family; no questions about Mr. Gunzbourg.

Q. I ask you whether you remember on one occasion, when Mr. and Mrs. Saitzoff were present, that Mr. Gunzbourg turned to you and spoke to you, presumably in French, asking you to remind him to sign his will tomorrow? A. No, I don't remember.

Q. Is it possible that such a conversation took place and you have forgotten it? A. I don't think so.

Q. Mrs. Pahud, referring back to September of 1953, you have stated that you saw Mr. Gunzbourg place certain marks on the margin of what have been shown to you as Exhibits 1-A and 1-B? A. Yes.

Q. And you understood at that time that Mr. Gunzbourg was making corrections on his will? A. Yes, because he told me so.

Q. Did you leave to go to the store at the time those corrections were being made? A. He had started while I was gone and he finished them when I returned.

Q. So some of the corrections were made during your absence?

28 A. Yes.

Q. Do you know which ones? A. No.

Q. Did you see the words that he wrote on the margins at that time? A. No, I was too far from him and I couldn't see them.

Q. You couldn't see whether he was writing his name at that time? A. No, I can't say because there was a table between us.

Q. And, as a matter of fact, you didn't know at that time that he was writing his name? A. Yes, because he told me,"I made some corrections but it is all right" --

Q. Would you repeat that, please? A. When I returned from the store, he told me, "I made some corrections about your name and about other matters but it is all right. I signed them."

Q. After September of 1953, when did you next see those writings on the will? A. I can't say because I only saw the testaments again when we signed them. I didn't see them in the meantime.

* * * * *

29 REDIRECT EXAMINATION

* * * * *

BY THE COURT:

Q. Did you sign Exhibits 1, 1-A and 1-B as a witness at the same time? A. Yes, Your Honor.

Q. Did your son, Claude Badoux, or you sign first?

THE COURT: Are you Claude E. Badoux?

THE INTERPRETER: Yes, Your Honor.

THE COURT: I see your signature here.

THE INTERPRETER: Yes, Your Honor.

BY THE COURT:

Q. Who signed the papers first, Claude Badoux or Adrienne Pahud? A. My son and I followed suit.

Q. Was there any reason for taking the second and third lines for
30 signatures? A. No. When I signed, it was the only line left.

Q. Was the signature of Catherine Gunzbourg-Gurney on the paper at that time? A. Yes.

Q. Will you show her Exhibit 1 and point out to her that the signature is not on that paper at this time? A. I didn't notice it.

Q. Madame Pahud, did you notice that Mr. Gunzbourg had not signed the paper at the conclusion of it at the time you placed your signature thereon? A. No, because he folded the paper for our signatures.

Q. So that what was by the signatures was not discernible to you? A. No, I didn't pay any attention. I was in a hurry. It was lunch time and I signed and went on.

Q. That is not responsive. Will you ask her whether the part of the paper writings above where she signed, whether that was concealed from her vision? A. I remember the paper was folded, that is all.

* * * * *

32 BY THE COURT:

Q. I understood you to say that the reason you had signed on the
33 third line on Exhibits 1, 1-A and 1-B was because there was no other place to sign? A. Yes.

Q. That is true as to 1-B and also as to 1? A. I signed everywhere in the same location.

Q. And you did not notice that, on 1-B, there was a place above your son's signature? A. No, I didn't notice it.

* * * * *

34 MR. BRYLAWSKI: I have a little recross, if Your Honor please, --

Your Honor, this is really a question to the translator, because Mrs. Gurney speaks French also and she has been following Mrs. Pahud's testimony in French.

When I asked Mrs. Pahud how she knew, not having seen the signatures being placed on pages 1 and 2, how she could reply -- Mrs. Gurney has these words written down -- "I make corrections and signed them."

35 Was that what she said?

THE INTERPRETER: Yes.

MR. BRYLAWSKI: I would like to have the record show that Mrs. Pahud said, "I make corrections and signed them."

THE INTERPRETER: The second time Mrs. Pahud said "I make corrections," she was quoting Mr. Gunzbourg and I said, "Them," so I add the word "them."

THE COURT: You were quoting Mr. Gunzbourg? I mean the witness was quoting Mr. Gunzbourg?

THE INTERPRETER: Yes.

MR. BRYLAWSKI: She is quoting him and saying, "I made corrections and signed them."

If Your Honor please, I would like to have Mrs. Pahud look at the 1943 will and identify the signature.

THE COURT: Very well.

MR. BRYLAWSKI: I should have done this on cross examination.

May this be marked for identification as Defendant Catherine Gunzbourg-Gurney's Exhibit 3 for identification?

THE COURT: Yes.

(The will of 1943 was marked Defendant Catherine Gunzbourg-Gurney's Exhibit No. 3 for identification.)

RECROSS EXAMINATION

BY MR. BRYLAWSKI:

36 Q. Mrs. Pahud, I hand you a document entitled, on the first page, "Last will and testament of Paul M. Gunzbourg," and marked for identification, the date line, Exhibit No. 1, and ask you if you recognize the signature that appears on page 7 of that document? A. Yes, it is Mr. Gunzbourg's.

* * * * *

39 CLAUDE EUGENE BADOUX

* * * * *

DIRECT EXAMINATION

BY MR. AULETTE:

Q. Mr. Badoux, before I start the interrogation, I would like to ask you to keep your voice up first so His Honor can hear without having to strain and, secondly, so the jury can hear also without having to strain.

Mr. Badoux, will you state your full name? A. Claude Eugene Badoux.

Q. Where do you live? A. 1650 Harvard Street, Northwest.

Q. How long have you lived at that address? A. Six months.

Q. Are you a permanent resident of the United States? A. A permanent resident as my job allows me to be.

Q. I mean by that, you are from Switzerland? A. I am from Switzerland.

Q. Do you have a visa which permits you to remain indefinitely?

40 A. I have a diplomatic visa working for the French Embassy, so if the embassy keeps me here I remain here.

Q. How long have you lived here? A. Six years.

Q. What is your occupation or profession? A. Interpreter.

Q. Who do you do interpreting for? A. The French Embassy.

Q. Do you do any other work interpreting? A. I do work for the Department of State.

Q. Before his death, did you know Paul M. Gunzbourg? A. I did, yes, sir.

Q. Will you describe to the Court and jury the circumstances under which you knew him? A. My mother was working for him as a practical

nurse and practically the first week she was in his employment, she asked me to meet Mr. Gunzbourg.

Q. How frequently did you see Mr. Gunzbourg? A. Not too frequently the first few months my mother was working for him, but, since he moved to the address where he passed away at 1801 Clydesdale Place, I met him quite frequently.

Q. About how often per week or per month would that be? A. I should say about ten times per month.

Q. When you saw him, was he at his own home or his own apart-
41 ment or somewhere else? A. I saw him in both the apartments he lived in, as well as in the hospital where he was treated.

Q. Directing your attention, Mr. Badoux, to about the middle of February, 1954, did you receive a telephone call from Mr. Gunzbourg? A. Yes, sir, I did.

Q. Will you tell us in what connection that phone call was for? A. Mr. Gunzbourg called me up in the morning to ask me to come over to his apartment to sign his testament as a witness.

Q. About what time of the day was that? A. It was late in the morning.

Q. Did you go to his home? A. I went to his home, yes, sir.

Q. Did he produce any sort of a paper? A. Yes, sir.

Q. What did he call that paper? A. He called it his testament.

Q. Did he ask you to sign the paper as witness?

MR. BRYLAWSKI: Your Honor, again I object to leading questions.

THE COURT: Do not lead him.

MR. BRYLAWSKI: I think he should ask what happened.

42 THE COURT: I agree with you. I sustain the objection.

BY MR. AULETTE:

Q. Will you tell what happened when you reached his residence? A. Mr. Gunzbourg was in bed in his bedroom and, when I arrived, I looked like I was in a hurry, which I was, as I had a luncheon appointment with my fiancee.

Q. Then what happened? A. He said he didn't want to detain me.

He said, "Here is my testament and I would like you to sign as a witness."

Q. Did you sign? A. I did, yes, sir.

Q. Was anyone else present at the time you signed? A. Only Mr. Gunzbourg and my mother.

Q. Did you sign in the presence of your mother? A. I did, yes, sir.

Q. Did your mother sign in your presence? A. Yes, sir.

Q. Did you sign in the presence of Mr. Gunzbourg? A. Yes, sir.

Q. Did your mother sign in the presence of Mr. Gunzbourg? A. Yes, sir.

Q. Do you recall approximately when you signed, the date? A. That must have been -- I know it was a Saturday in the middle of 43 February.

Q. Did you sign at the request and demand of Mr. Gunzbourg? A. Yes, sir.

Q. Did your mother, to your knowledge, sign at the request of Mr. Gunzbourg?

MR. BRYLAWSKI: I object, Your Honor.

THE COURT: I sustain the objection. You may ask what was said.

BY MR. AULETTE:

Q. What was said at the time of the signing?

THE COURT: By his mother?

MR. AULETTE: By his mother.

THE COURT: Or prior to it.

To your knowledge, and not what someone told you.

THE WITNESS: To my knowledge -- I am afraid I don't get the question.

BY MR. AULETTE:

Q. You were present when the signing was made, were you not? A. Yes, sir.

Q. What did Mr. Gunzbourg say to you and to your mother at that time? A. Well, he told us that he needed two signatures to make his testament valid and he asked us if we would put our signatures on the

44 document.

Q. Did both of you sign? A. Yes, sir.

Q. Mr. Badoux, I am going to show you a paper writing that has been introduced in evidence and it is marked Plaintiff Corrao's Exhibit 1-A and I wish to ask you some questions about this (indicating).

You will notice in the left-hand margin, in the upper part or middle part there some writing. Do you recognize whose writing that is? A. Yes, sir.

Q. Whose writing is it? A. Mr. Gunzbourg's.

THE COURT: He has not qualified that he knows his signature on his writing.

That will be stricken until he qualifies.

MR. BRYLAWSKI: Your Honor, if it would save time, I think both Mr. Seigler and I are willing to stipulate that is his writing.

THE COURT: I thought you were rising to object because he has not qualified.

MR. BRYLAWSKI: We don't contend that is not his writing.

THE COURT: Is that also your position?

MR. SIEGLER: Yes, Your Honor.

45 THE COURT: Very well.

MR. AULETTE: Then may I ask the position with respect to the writing on page 1.

MR. BRYLAWSKI: That is our position with respect to the writing on pages 1 and 2 on your Exhibits 1-A and 1-B.

MR. AULETTE: With respect to the writing on 1-A and 1-B?

MR. BRYLAWSKI: That is our stipulation.

BY MR. AULETTE:

Q. Mr. Badoux, did you ever see Paul M. Gunzbourg write his signature? A. Yes, sir.

THE COURT: Why do you want to qualify him? Why do you want to qualify him now that you have the stipulation or is it in connection with something else?

MR. AULETTE: No, I think that is enough. I think I need no further questions.

BY MR. AULETTE:

Q. Mr. Badoux, I am going to show you another paper writing marked Carrao's Plaintiff's Exhibit 1-B --

MR. BRYLAWSKI: We will stipulate to the same thing.

MR. AULETTE: You will stipulate to the same thing?

MR. SIEGLER: That is correct.

BY MR. AULETTE:

46 Q. Mr. Badoux, showing you Exhibits 1-A and 1-B and turning to the last page, is that your signature there (indicating)? A. Yes, sir.

Q. Is that the signature that you placed on there about the middle of February, 1954? A. Yes, sir.

Q. Is that the signature that you placed there in the presence of Mr. Gunzbourg? A. Yes, sir.

Q. Is that the signature you placed there at his request? A. Yes, sir.

MR. AULETTE: That is all, Your Honor.

CROSS EXAMINATION

BY MR. BRYLAWSKI:

Q. Mr. Badoux, when Mr. Gunzbourg asked you to sign as witness to this document, I wonder if you could try to fold it right now like it might have been folded at the time that you signed it, if you remember.
A. I think it was like this (indicating).

THE COURT: Show this to the jury.

(The document was shown to the jury as it was folded.)

BY MR. BRYLAWSKI:

Q. Were all the documents folded the same? A. Yes, sir.

47 MR. BRYLAWSKI: Just to shorten this interrogation, I am going to refer to Exhibit 1 of Mr. Carrao.

BY MR. BRYLAWSKI:

Q. This is your signature on this document which has been introduced in evidence as Exhibit 1 of Mr. Carrao, isn't that correct?
A. Yes, sir.

Q. Will you fold that also in the same manner?

(The exhibit was folded by the witness and shown to the jury.)

THE COURT: Doh't you think you ought to show them to the jury now.

MR. BRYLAWSKI: Ladies and gentlemen of the jury, I am holding all three copies of Mr. Carrao's Exhibit 1, which is the 1953 will, and I am showing them folded in the same manner that Mr. Badoux had them when he signed them.

(The three documents were shown to the jury.)

BY MR. BRYLAWSKI:

Q. Mr. Badoux, it is true, then, is it not, that at the time you signed this document you did not see the signature of Mr. Gunzbourg on the document? A. That is true, sir.

Q. And is it also true that you don't know whether or not he ever signed that document before you did? A. That is true, yes, sir.

* * * * *

48 BY THE COURT:

Q. At that time, Mr. Badoux, you signed each of these three paper writings two times? A. Yes, sir.

Q. And after one signature on each of the paper writings, did you put your address? A. Yes, sir.

Q. And on the other signature on each of the paper writings, you did not put your address? A. Yes, Your Honor.

Q. Did you read what was stated in typewriting above your signature which appears in the lower portion of each of these exhibits?
A. Well, I glanced through -- going from one line to the lower line I glanced through the typewritten inscription and I saw Paul M. Gunzbourg last will or something to that effect but I didn't have time to read it. I just skipped through it.

49 Q. And it never occurred to you to fill out the date? A. No, Your Honor.

Q. You did not fill out the date? A. No, Your Honor.

Q. Did you notice that the typewriting stated that the instrument was signed and sealed at the end thereof and published and declared by the above-named testator, Paul M. Gunzbourg, as and for his last will and testament? A. I just saw the name, Your Honor, and the words "Last will or testament."

Q. You didn't see the word "Signed"? A. No, Your Honor.

Q. Did you notice that on one of the exhibits the name Catherine Gunzbourg-Gurney did not appear at the time you signed it? A. Quite frankly, your Honor, I don't remember. All the time I was signing these things, Mr. Gunzbourg was talking and I kept talking with him and, therefore, I had my mind both on my signature and on the conversation.

* * * * *

60 CATHERINE GUNZBOURG-GURNEY

* * * * *

DIRECT EXAMINATION

BY MR. BRYLAWSKI:

Q. Mrs. Gurney, I am going to remind you to try to speak loudly and fairly slowly aso we can all hear and understand you.

State your full name, please. A. Catherine Gunzbourg-Gurney.

Q. Where do you live? A. 135 West 58th Street, New York City.

Q. You are a resident of the city of New York? A. I am.

Q. Are you or were you related to the decedent, Paul M. Gunzbourg? A. Yes, I was married to his brother.

Q. What was his brother's name? A. Jules.

Q. Is Mr. Gunzbourg's brother now living? A. No, he is dead.

Q. Did he pre-decease Mr. Paul Gunzbourg? A. Yes, he died in 1950.

61 Q. You are the mother of Maxim Gurney? A. Yes, I am.

Q. And is it a fact that Maxim Gurney is Paul Gunzbourg's sole heir? A. He is his sole nephew, yes.

Q. Paul Gunzbourgh had no children? A. No, he had not.

Q. Was he ever married? A. Yes.

Q. Is his wife alive? A. No, she died.

Q. Did she pre-decease him? A. Yes.

Q. He has no living children, brothers or sisters? A. No.

Q. Mother or father? A. No.

Q. Your son is his sole heir? A. Yes.

* * * * *

62 Q. Did there come a time when you visited him in 1954? A. Yes.

Q. When was that? A. From January 18 to the 20th, three days.

Q. Where did you spend those three days? A. With him in his apartment.

Q. Where was that? A. In Washington, I think on Clydesdale Place.

Q. Did there come a time, during that visit, that Mr. Gunzbourg mentioned any document to you that you should sign? A. He said to me, "Please sign this for me." He didn't say what it is.

Q. Tell me just what happened. Did he give you something to sign? A. Yes.

Q. Give us a complete picture. A. He gave me to sign something and I signed it and I was afraid because I didn't know what I did sign, so, when I signed it, I looked at him and he told me something, explaining that it was his will.

Q. I am going to show you a document which has been introduced into evidence as Plaintiff Corrao Exhibit 1 and which is further identified as the decedent's 1953 will.

I will show you what appears to be your name on the last page of

63 that will. A. Yes.

Q. And I ask you if that is your writing? A. Yes, it is.

Q. Is this, to the best of your knowledge, the document that he asked you to sign? A. Yes.

Q. At the instance that you mentioned? A. Yes.

Q. Did you see any signature of Mr. Gunzbourg on that document at the time you signed it? A. No.

Q. I show you a copy of the same document marked Plaintiff's Exhibit No. 1 -- that was Exhibit 1-A that I showed you before -- and

ask you again is that your signature on that document? A. Yes, it is.

Q. To the best of your knowledge, was that placed on there contemporaneously with the one I showed you previously? A. Yes.

Q. And did you, when you signed that document, see the testator's signature on the document? A. No.

Q. Was anything further said with respect to these two documents at the time that you signed? A. No.

64 Q. Was anyone else present other than the decedent? A. No.

Q. Mrs. Gurney, referring to Exhibit 1 of Catherine Gunzbourg Gurney, which is the will of February 1952, I am going to read to you a reference in this will to Helen Douglas and ask you who she is. In Item 4, the will reads:

"Should my friend, Helen Douglas, now over 80 survive me, I hereby request that a sum of $5,000 readily available in the Capital of the U. S. A. or dividends from U. S. A. be set aside to pay her living expenses and burial" -- I will skip a few words.

I ask you who is or was Helen Douglas? A. Helen Douglas was a governess of his wife who came from Russia and she was considered like a mother of his wife and she died.

Q. Did she die before or after Mr. Gunzbourg? A. Before.

* * * * *

67 BY THE COURT:

Q. Mrs. Gurney, showing you Plaintiff Corrao's Exhibit 1-A, I notice that you signed your name in two places. A. Yes.

Q. And at that time, was the paper folded or was the entire sheet visible to you? A. I didn't read anything. I was so afraid to sign something which I haven't read so I just signed.

Q. You didn't examine any of the sheets? A. No.

Q. Were any signatures on the papers so far as you remember at the time you signed? A. As far as I remember, there was no signature.

Q. And you didn't read the attestation clause? A. No.

68 Q. Which says it was signed and sealed? A. No.

Q. By the testator, Paul M. Gunzbourg, as his last will and testament? A. No, I didn't.

Q. What was it he said to you? A. "Please sign this for me, Catherine."

Q. What did you say? A. So I signed because I couldn't say to him no. He was my brother-in-law.

Q. What did you say to him? A. "All right," and I signed it. I didn't say anything. After I looked at him asking what did I do, after all, and then he told me something, explained this was his will.

* * * * *

ALEXANDER MARK SAITZOFF

* * * * *

DIRECT EXAMINATION

BY MR. BRYLAWSKI:

Q. I am going to ask you to try to speak fairly loud and slowly,
69 Mr. Saitzoff. A. Yes.

Q. Speak slowly and clearly so we can all understand you. State your name, please. A. Alexander Mark Saitzoff.

Q. Will you spell your last name? A. S-a-i-t-z-o-f-f.

Q. Where do you live, Mr. Saitzoff? A. In Washington at 3038 Dumbarton Avenue.

Q. You are a permanent resident of the District of Columbia? A. I am.

Q. What is your occupation, sir? A. I am an engineer. I am a licensed engineer in the District of Columbia.

Q. Are you employed practicing under your license? A. I am employed.

Q. Where are you employed? A. I am employed by the International Bank for the construction development.

Q. You are employed by the International Bank? A. That is right.

Q. As an engineer? A. As an engineer.

Q. Did you know the decedent, Paul M. Gunzbourg? A. Yes,
70 very well.

Q. How long had you known him? A. Approximately 29 years.

Q. Where did you first know him? A. I knew him first in Belgium, the Belgium branch of the Siemens Company. They were a large manufacturer of electrical equipment and they had a big sales office in Brussels and Paul Gunzbourg and myself were employed by this office.

Q. You were employed together in Brussels? A. That is right.

Q. To your knowledge, what was Mr. Gunzbourg's nativity? Where was he born? A. At the beginning, Mr. Gunzbourg was chief engineer --

Q. I asked you where was he from. A. He was originally Russian. He was educated in Russia. He was a Russian engineer and joined the Siemens firm in Belgium in Brussels.

Q. When was that, approximately? A. In 1926.

Q. Do you know how long he stayed as an engineer in Brussels? A. He was a couple of years as chief engineer and, after that, he was appointed second man in command of this office and he stayed in Brussels about 6 or 7 years. After that, he was transferred to Paris as chief executive of the Paris branch of the Siemens Company. He stayed in
71 Paris until the war. All told, he was about 14 years with Siemens abroad and he was with Siemens before in Russia, but that part of his activity I don't know.

Q. Do you know when he came to this country? A. In 1941.

Q. And did you have any further association with him after he came? A. I did. I met him very often and, in 1947, we were associated in a joint venture. We had a technical office which belonged to us and also export-import. He was president of that office.

Q. And how long did that association last? A. About two years-- a little more, I would say three years.

Q. Subsequent to the termination of that association, did you see him after that? A. Very often. I joined the International Bank and I used to be in New York and we used to talk about our common business, which he continued after my departure.

Q. Then there came a time, did there not, when he moved to Washington, D. C. ? A. That is correct.

Q. When was that? A. As far as I recall, it was early '52, in 1952.

72 Q. Did you see him after that time? A. Yes, very often here. We were close friends and we used to visit him, both my wife and myself regularly. In the last years of his life, I would think that I saw him three or four times a month on the average.

Q. In your home, his home, or both? A. As long as he was in good health, he used to come to our home but that was at the beginning and later I visited him at his own home.

Q. When he came to Washington, D. C., in 1952, do you know what position he took at that time? A. He joined the Air Information Service at the Library of Congress.

Q. And do you know what position he held there? A. Yes, I think he was in charge of a technical department there consisting of 8 or 10 men, something like that. He joined it as a professional engineer in his own field.

Q. And do you know what salary or government grade his job was classified at? A. To the best of my knowledge, it was something around $8,000 a year. I am not quite sure of the exact figure. That was approximately it.

Q. Referring now to your visits to Mr. Gunzbourg's home during the period prior to his death and particularly during the last months of his life, I ask you if at any time you had a conversation with him in which

73 his will was mentioned?

MR. AULETTE: Your Honor, I will object to that on three grounds. First, it is irrelevant. Second, it is hearsay and, third, and most important of all, it is in violation of Title 14, Section 302, of the District of Columbia Code.

* * * * *

76 THE COURT: I overrule the objection.

BY MR. BRYLAWSKI:

Q. Mr. Saitzoff, I repeat my question to make sure we all have in mind the same question.

I asked you whether or not during the weeks preceding Mr. Gunzbourg's death and during the period of any visit that you had with him at his home, whether at any time during that period he ever mentioned a will to you. A. Yes, sir.

Q. Who was present when that conversation occurred? A. Mrs. Pahud and my wife.

Q. And tell us just what was said by Mr. Gunzbourg at that time.

77 A. We were chatting with Mr. Gunzbourg --

Q. You were what? A. We were chatting, talking with him, and at a certain moment the question of his will was raised, -- I could not recall under what circumstances -- but Mrs. Pahud offered to give him the will to sign and he told her, "No, I will sign it tomorrow," and then he turned around to my wife and to myself and continued the conversation in Russian as we usually talked with him, and he said, "I am not quite decided yet. I want to think it over."

Q. He said that to you? A. He said that to both my wife and myself.

Q. In Russian? A. In Russian.

Q. To the best of your recollection, when did that conversation take place? A. I will say between three weeks and one month before his death. I recollect that that was the time before the last that I paid a visit to him and, as I used to pay him a visit every 10 or 15 days, I would say that that happened not more than a month before his death.

Q. That would place the time at about the end of April of 1954? A. That is what I would think.

Q. All right, sir.

78 Was there any other conversation that you ever had with him that he mentioned his will? A. Yes, from time to time he used to raise the subject. I was very closely connected with him but I tried to avoid talking about his personal matters but he occasionally showed some excitement about the decision he would have to make. I always considered

Mr. Gunzbourg to be a highly honorable man.

THE COURT: That is not responsive.

THE WITNESS: I am sorry.

THE COURT: There is no question pending.

BY MR. BRYLAWSKI:

Q. What I asked you, if you can tell me, was whether you recall anything that he said at any other time regarding his will and, first, if you can, say when those declarations were made to you. A. I couldn't fix a date, sir, but on various occasions he would mention that he had to decide how, what arrangements to make in connection with his will and he used to put up some of his ideas. He would say, "I have to decide what I am going to do with my antique objects," because he used to particularly like those objects and he used to talk about being completely fair in dividing his estate but he never mentioned any decisions that he made. He was just discussing it in a broad sense.

Q. Mr. Saitzoff, I am going to refer to your business relation-
79 ships with Mr. Gunzbourg. Did you say you were associated with him in business? A. Yes, sir.

Q. And that was in '47? A. I was personally associated with him in'47 and I was, for a duration of 6 to 8 years, associated in the same office in Siemens in Brussels.

Q. During those periods that you were associated with him in either Brussels or New York, did you ever see him sign his name to a document? A. A number of times.

Q. Did you ever see him sign his name to a document where there was a place inscribed on the document for him to sign, like a line on which his name should appear? A. Yes, of course.

Q. Did you ever see him sign that type of document? A. Yes.

Q. I ask you whether you ever saw him sign such a document at any other place than the bottom line. A. No, I don't recall.

Q. Would you estimate how many documents you have seen him sign? A. A very large amount over the period of years, correspondence, letters, documents, a tremendous large amount, whatever you

can expect in a business office, quite a number daily.

80 Q. And he always signed those, to your knowledge, at the place where his signature would normally appear? A. As far as I recall, sir. He was an experienced business man and signed where he was expected to.

Q. Did you ever see him place his initials on a document? A. Yes, sir.

Q. Can you state for what purpose he may have placed his initials on a document when you saw him? A. First of all, as an executive of Siemens Company, he very often made changes on certain documents which were presented by his own staff and made comments and those comments or changes were made in the margins and he always had the custom to initial them.

It was quite normal in our operation to receive a letter or document back from him with certain annotations which usually were initialed by him.

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82 NATALIE SAITZOFF

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DIRECT EXAMINATION

BY MR. BRYLAWSKI:

Q. Mrs. Saitzoff, please keep your voice up and talk slowly and clearly so we can all hear you.

State your full name, please. A. Natalie Saitzoff.

Q. Where do you live, Mrs. Saitzoff? A. Washington, 3038 Dumbarton Avenue.

Q. You are the wife of Alexander Saitzoff? A. Yes.

Q. And you did know Paul M. Gunzbourg before his death? A. Yes, I did.

Q. And did you visit him in his home? A. Yes.

Q. Referring now to a visit in his home about a month before his death --

MR. AULETTE: I object, Your Honor, as being a leading question.

MR. BRYLAWSKI: I am trying to pinpoint a conversation and I can't do that unless I give her some idea of what conversation I am
83 talking about.

THE COURT: Ask her if she had a conversation with him shortly before his death and ask her when it was and then you have pinpointed it.

BY MR. BRYLAWSKI:

Q. Did you have a conversation with the decedent shortly before his death? A. Yes.

Q. Can you recall when that was? A. Three to four weeks before his death, the beginning of May.

THE COURT: Keep your voice up, Mrs. Saitzoff.

THE WITNESS: I will try my best.

BY MR. BRYLAWSKI:

Q. Three or four weeks before his death? A. Yes.

Q. Where did the conversation take place? A. In his home.

Q. Who was there? A. My husband and I, Madame Pahud and Mr. Gunzbourg.

Q. At that time, did he make any reference to a will, to the subject of having a will or not having a will? A. Yes.

MR. AULETTE: I would like for the record to note an objection again, as before.

84 THE COURT: Overruled. This will be received as bearing on intent.

MR. AULETTE: Yes.

BY MR. BRYLAWSKI:

Q. You said there was such a conversation, did you not? A. I did.

Q. Tell us, to the best of your recollection, what he said at that time. A. I will try my best. We were talking about a will and Madame Pahud offered, told him, "Would you like me to bring it over and you can sign it right here," and he said, "I will think it over and bring it tomorrow."

Q. Was anything further said at that time? A. He told to my husband and to me that he wanted to think it over. We talked French with Madame Pahud and we talked Russian with him and he said it in Russian.

Q. Are you employed? A. The Library of Congress, yes.

Q. Did you know Mr. Gunzbourg when he was employed there? A. I got him his job.

Q. You got him his job? A. Yes; I advised him to apply for his job.

Q. Can you tell us his title and grade? A. He was the head of a construction unit of Air Information Division in the Library of Congress
85 and his grade was GS 13.

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92 ADRIENNE PAHUD,

* * * * *

DIRECT EXAMINATION

BY MR. AULETTE:

Q. Mrs. Pahud, directing your attention to approximately one month prior to the death of Paul M. Gunzbourg, do you recall a visit in his home at which you were present by Mr. and Mrs. Saitzoff? A. I remember the occasion often, but whether they came a week before the death or not, I can't remember.

Q. Mrs. Pahud, in their presence at any time then, did you say to Mr. Gunzbourg, "Would you like me to bring it" -- meaning the will --
93 "over and you can sign it right here," and he replied, "I will think it over and bring it tomorrow"? A. No.

Q. Are you sure of that? A. I am very sure of that. We never spoke about a will with Mr. and Mrs. Saitzoff.

MR. AULETTE: That is all I have.

CROSS EXAMINATION

BY MR. BRYLAWSKI:

Q. Madame Pahud, is it your testimony that Mr. and Mrs. Saitzoff were frequent visitors to Mr. Gunzbourg's home? A. Yes, I saw them often.

Q. And during the time that they came to visit, did they hold conversations with Mr. Gunzbourg in your presence? A. Yes, but they talk mainly in Russian, and if they talked in French it was merely to ask questions about myself, my son or my relationship between Mr. Gunzbourg, my patient, and myself.

Q. But they did address you in French at times? A. Always.

Q. Isn't it possible that at one of those times when you were present, they addressed you in French --

Let me reframe that question.

Isn't it possible that during one of their visits there may have been a conversation with words addressed to you in French concerning the

94 will? A. No, that must be a mistake, to the best of my knowledge.

Q. Isn't it possible that such a conversation could have taken place without your remembering it? A. I don't believe so.

* * * * *

96 (Two wills were marked Defendant Maxim J. Gurney's Exhibit No. 1 and Defendant Catherine Gunzbourg-Gurney's Exhibit No. 1 for identification and received in evidence.)

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99 CHARGE TO THE JURY

THE COURT: Members of the jury, as you know, this is a will contest case. The plaintiff is Eugene Corrao, seated at the counsel table with his counsel, who is the executor named in the paper writings dated 1953, which have been referred to as Exhibits 1, 1-A and 1-B. He is the proponent of these writings.

The defendants are Catherine Gunzbourg-Gurney and Maxim Gurney, who are the executors named in the will dated February, 1952. Mrs. Gunzbourg-Gurney has been sitting at the counsel table with her counsel and now is in the courtroom. Mr. Maxim Gurney has been identified to you as a person now in France. They are resisting the

100 plaintiff in his claim as to the validity of the 1953 paper writings.

It is the duty of the Judge at this stage of the trial to give the jury the principles of law which are to guide the jury in their deliberations and in their determination of a verdict. It is the duty of the jury to follow the law as the Judge gives it to them.

The jury has another duty and responsibility. The jury has the duty of finding the facts and, after finding the facts, to apply the law as

the Judge gives it to them and reach a proper verdict.

You are the judges of the facts. You are the sole judges of the facts. In finding the facts, you are limited to one source, namely, the evidence and inferences reasonably deducible from the evidence.

The evidence consists of what you have heard from the witnesses who have testified before you in open court and exhibits and nothing else except stipulations and when counsel make stipulations as to the facts, they may be regarded by you as facts.

Being the sole judges of the facts, you are, of necessity, the sole judges of the credibility of the witnesses, that is, the amount of credibility you will give to the testimony of each witness who has appeared before you and, in determining credibility, you will take into account the manner and demeanor and conduct of the witnesses as they testified;

101 their ability or lack of ability to express to you, through the medium of words, what they have seen or heard; their interest or lack of interest in the outcome of the case or any bias or prejudice which may have distorted or influenced their testimony.

In your deliberations and in the determination of your verdict, you will be fair and impartial, bearing in mind that you are the fact-finding body and you will determine those facts calmly, unemotionally and objectively. You are not permitted to guess or speculate but you are to look solely to the evidence and the inferences reasonably deducible from the evidence, as I have told you. However, you are not to put aside your common sense or your experience in life when you weigh and evaluate and sift the evidence.

You should give very careful attention to the summations of counsel because they are designed to assist you in organizing and marshalling the facts. However, if any statement made by counsel is contrary to your recollection of the facts, it is your recollection that governs and not theirs because what they say to you is not evidence. Also, you should consider the summations of counsel in the light of the fact that each is an advocate of his particular side.

I shall comment on the evidence and, in so doing, it is for the purpose solely of assisting you in understanding the issues you are called
102 upon to decide and not for the purpose of influencing your judgment on the facts. If anything I say is contrary to your recollection of the facts, it is your recollection that governs and not mine because what I say to you is not evidence.

The burden of proof rests upon the plaintiff. By that is meant the plaintiff has the burden of proving by a preponderance of the evidence his side of the case. A preponderance of the evidence does not mean the greater number of witnesses on one side or the other. It means that state in the evidence which is more convincing to your minds as jurors when you weigh it against the evidence opposed to it.

I have granted certain prayers and special instructions which I shall read to you before I am through. They state the law in respect of the matters dealt with in them. If there should be any repetition in what I say to you, generally, and what is contained in those prayers, the repetition is not intended for emphasis. The repetition will be brought about primarily because the Judge's charge, if it is to be coherent and have continuity, sometimes necessarily has to repeat some of the statements made in prayers or special instructions which have been requested and which counsel are entitled to have granted when they state the law.

When you go to your jury room, you will take with you a special interrogatory which will be on a piece of paper. This is not the usual
103 proceeding but this is a proceeding which you will follow in this case and you will be required to answer that interrogatory in the affirmative or negative upon the facts and under the law as I have given it to you and shall give it to you. The answer to that interrogatory will be your verdict.

The interrogatory reads as follows:

"Was the will marked 1953 duly executed by the decedent in accordance with the requirements of law?"

I will read it to you again:

"Was the will marked 1953 duly executed by the decedent in accordance with the requirements of law?"

Now, what are the requirements of law? The basic law on this question is the code of laws of the District of Columbia which, so far as relevant and pertinent, read as follows:

> "All wills and testaments shall be in writing and signed by the testator and shall be attested and subscribed in the presence of the said testator by at least two credible witnesses or else they shall be utterly void and of no effect."

The word "attested" means witnessed and the word "subscribed" means signed. A typewritten document is a writing.

It is not necessary that a will be subscribed at the place provided
104 therefor at the end of the document. It may be signed at any other place provided the signature of the testator was written thereon with the intention of effectuating it as his will.

The proponent of the claimed will, Mr. Corrao, who is named executor therein, contends that the signing on the margin at the bottom of pages 1 and 2 of Exhibits 1-A and 1-B was an act of the testator in effectuating his will. The opponents of the claimed will contend that these signatures were placed thereon for the purpose of showing that the corrections made thereon were made by the testator and that he never reached the point of signing with the intention of effectuating a will.

This involves the question of the testator's intent, Mr. Gunzbourg's mental state. Of course, you cannot look into the mind of a living person and, of course, you cannot look into the mind of a dead person but judges and juries are constantly called upon to determine intent, which is a mental state of persons, and you are called upon to determine the mental state of Mr. Gunzbourg and on that question you have the testimony of witnesses and also the superimposed inscription by the testator on the 1952 will. You have many other facts and circumstances and you will consider them all together, with his acts and deeds, in determining what was his mental state at the time he did the acts in question.

105 So far as a superimposed inscription by the testator on the 1952 will is concerned, the proponent of the claimed will contends that this shows that he intended, by his signatures on the paper writings, Exhibits 1-A and 1-B, to effectuate his will because he had written on the earlier will that it was superseded by a new testament. The opponents of the claimed will contend that this inscription was placed thereon as part of his plan to make a new will, which was never consummated, and also that there was no showing as to the time when that inscription was put thereon.

There is no direct evidence as to when the superimposed inscription was placed on the 1952 will and you should give that inscription such weight as you deem it to be entitled, having in mind that such inscription would have no evidential value unless you find that it related to the claimed execution of the 1953 paper writing.

It is unnecessary for the testator actually to sign the will in the presence of the witnesses who subscribe the same but any declaration that the paper writing is his will is equivalent to an actual signature in the presence of witnesses and makes the attestation and the subscription of the witnesses complete.

Here, there is uncontradicted evidence of such a declaration. The witnesses are not required to sign as witnesses in the presence of each other but they must sign in the presence of the testator. There is un-

106 contradicted evidence that they did so in this case.

It is not necessary that a will be dated to sustain its validity. However, intention alone to make a will is not sufficient but it must be in writing and signed and attested and subscribed, as I have stated to you, to be a valid will. There is no dispute in this case as to when the writings on the margin and at the bottom of pages 1 and 2 of Exhibits 1-A and 1-B were placed thereon because it has been stipulated by the defendants that those writings were placed thereon before the signatures of the witnesses and that they were placed thereon by Mr. Gunzbourg. The dispute, as I have said, is whether Mr. Gunzbourg, at the time he placed those writings on Exhibits 1-A and 1-B did or did not intend thereby to effectuate a will.

There has been argument that Mr. Gunzbourg made previous wills and that when he made them, he signed at the end thereof in the place provided and that if he intended to effectuate his will in the case before you he would have followed his previous custom. You may consider those facts as bearing on his intent but you should also consider it in the light of the fact that those earlier testaments were made in New York where the law requires that it be signed by the testator at the end of the will. There is no such requirement in the District of Columbia. There is no evidence as to whether Mr. Gunzbourg knew
107 the requirements of the law of New York or the requirements of the law of the District of Columbia on this point.

In this case, there was an original and two carbon copies of the paper writing in question. The original or ribbon copy was not signed by the testator. The carbon copies containing the writings by the testator on pages 1 and 2 and on the margin and at the bottom contained those writings. The fact that a paper writing purporting to be a will is a carbon copy and is not an original copy does not alone invalidate a will otherwise valid, but the fact that the writings made by Mr. Gunzbourg were on the carbons and not on the ribbon copy is a matter for you to consider when you determine this question of intent, that is, whether Mr. Gunzbourg intended, when he put the writings on the carbon copies, to effectuate a will.

The testimony of alleged verbal statements made by Mr. Gunzbourg at times other than at the time that the witnesses to the paper writing signed it were received solely as bearing on the issue of whether he did or did not have an intention to effectuate the making of his will at the time he signed the paper writings in question and may be considered by you for no other purpose.

The testator may sign his name by writing it out in full or by abbreviating it. The fact that the signature is imperfect and defective
108 does not alone render the will invalid if the testator's name can be recognized as his signature and if the testator intended it as his signature.

The plaintiff, Eugene Corrao, has the burden of proving that the will marked 1953 was duly executed by the decedent, Paul M. Gunzbourg, in accordance with the requirements of law. Plaintiff, Eugene Corrao, is required to prove his case by a fair preponderance of the evidence. This means the greater weight of the evidence. In considering whether the plaintiff, Eugene Corrao, has carried or failed to carry his burden of proving his case by a fair preponderance of the evidence, you shall consider all the evidence in the case and draw all reasonable inferences from the proven facts.

I am reading some prayers now which do have some repetition of what I have told you, but, as I have already told you, that repetition is not intended for emphasis. Consider the charge as a whole.

A document is not a valid will and testament unless it has been duly executed by the decedent in accordance with the requirements of law. The mere placing of the decedent's signature on the will does not, by itself, satisfy the requirements of law. The law requires that the placing of the decedent's signature on the will must be made with the intention that the signature will make the will effective and with the contemplation that no further signing by him of the will is necessary.

109 In determining whether it was the decedent's intent that any of the signatures on pages 1 and 2 of the 1953 paper writings effect an execution of such paper writings as his will, the jury is entitled to consider all the evidence and all the circumstances under which the said writings occurred, including, but not limited to the manner in which the signatures were written, the pages of the said paper writing on which they were written, the position of the signatures on the pages, the copies upon which the signatures were placed, what was said by decedent at the time the writings were contemplated and what he said at later times with respect to the paper writings.

If you find from the evidence that, when decedent placed his signatures and other writings on the margins and at the bottom of the first and second pages of exhibits 1-A and 1-B, that is, the carbon copies of the 1953 paper writings, he did so for the purpose of authenticating corrections

on those pages or if you find that, in placing such signatures and other writings, he contemplated a further signing of the paper writings by him to effectuate his will or if you find that he placed such signatures and other writings without the intention of effectuating his will, then your answer to the special interrogatory would in the negative, but, on the contrary, if you find from the evidence that at the time of placing such
100 signatures and other writings or any one of such signatures on the margin and at the bottom of those exhibits, he had the intention of effectuating his will, your answer to the special interrogatory will be in the affirmative.

When you go to the jury room, you will first select your foreman, who will preside over your deliberations. He will see to it that each of you is given a reasonable opportunity to express his views and make his arguments. When you reach a verdict, which must be unanimous, you will inform the Marshal, in whose custody you will be; he will notify me and I shall assmble counsel and receive the verdict. The verdict will be announced by your foreman. It will be either yes or no to the special interrogatory determined upon the facts and under the law as I have given it to you. If the jury is polled, each of you will be required to give his answer to that interrogatory.

Mr. Clerk, you will see to it that the exhibits in this case are handed to the jury as they retire.

I had the special interrogatory rewritten because it could not be used in the form submitted, as you gentlemen understand.

I will receive objections at the bench, gentlemen, if you have any objections.

(At the bench:)

THE COURT: I noticed that that special interrogatory was signed
111 by Mr. Siegler and, when I noticed that, I had it rewritten.

MR. AULETTE: Your Honor, I have only one thing here, that you mentioned in your charge there was no dispute as to when all of those signatures were put there. Our contention is that the signatures in the upper margins were put there in September but we have no knowledge

when the ones in the lower margin were put there.

THE COURT: I wish you had been more specific about that before.

MR. AULETTE: I wrote it out here last night and read it to you. I will see if I can find it.

THE COURT: Here is what I wrote yesterday evening and read to you:

"There is no dispute in this case as to when the writings on the margins at the bottom of the pages 1 and 2 on Exhibits 1-A and 1-B were placed therein because it has been stipulated by the defendants that those writings were placed thereon by Mr. Gunzbourg before the signatures of the witnesses."

MR. AULETTE: If that is understood to mean they were placed there before the signatures of the witnesses but not necessarily simultaneously with the ones in the upper margins --

THE COURT: If there is no objection, I will try to clear that up.

112 MR. BRYLAWSKI: Of course, I object on this ground: There is no evidence whatever that they were not put on at the same time and there is evidence from your own tienss (witness), Mrs. Pahud, that those words were put there in September, 1953.

MR. AULETTE: No.

MR. BRYLAWSKI: There was no basis for that change. I have here the affidavit that Mrs. Pahud gave to the Register of Wills and she said that all marks were on that document in September, 1953.

MR. AULETTE: And in the deposition, which you took, she clarified that.

MR. BRYLAWSKI: So there is no basis for that charge. There is no evidentiary basis showing that those marks were placed there other than in September, 1953.

THE COURT: I wish you had been a little more specific about this before. I remember you asked time and again: Do you stipulate that this is his signature, that these writings were placed here before the witnesses --

MR. AULETTE: Before the witnesses signed, yes, but not that they were placed there in September.

MR. BRYLAWSKI: But there is no evidence to the contrary.

MR. AULETTE: There is no evidence that there is. That is for the jury.

113 MR. BRYLAWSKI: His own witness stated in September --

MR. AULETTE: Not that the ones at the bottom were put there in September.

THE COURT: I was referring to your stipulation when I wrote this.

What was the stipulation? Was it that the writings were placed there before the signatures of the witnesses?

MR. BRYLAWSKI: That was the stipulation, yes.

THE COURT: -- by Mr. Gunzbourg.

MR. BRYLAWSKI: Yes.

THE COURT: I will tell them what he argues and what you argue.

MR. BRYLAWSKI: I not only argue but I say there is no evidence.

THE COURT: And will say you claim there is no evidence.

It was not too clear when the cross examination was conducted. She certainly said that everything was on there but whether she was referring to --

MR. BRYLAWSKI: Here (indicating) is her affidavit.

THE COURT: That is not in evidence.

MR. BRYLAWSKI: No, because I thought it was absolutely clear without it.

MR. AULETTE: But in the deposition --

THE COURT: Let's don't go into that. I don't care to hear about

114 the deposition because I don't think that has any relevancy whatever now, does it?

MR. AULETTE: No.

THE COURT: Do you have anything further?

MR. BRYLAWSKI: Nothing further.

THE COURT: Do you have anything further?

MR. AULETTE: No.

THE COURT: I will see if I can clarify it to your satisfaction and if I do not come back to the bench.

(End of bench conference.)

THE COURT: Members of the jury, I said to you in my general charge that there was no dispute in this case as to when the writings on the margins and at the bottom of pages 1 and 2 of Exhibits 1-A and 1-B were placed thereon because it has been stipulated by the defendants that those writings were placed thereon before the signatures of the witnesses and placed thereon by Mr. Gunzbourg.

The stipulation was exactly to that effect, which made it unnecessary for the plaintiff to show that they were on there before the witness signed. However, in argument, plaintiff's counsel contends that you may find from the evidence that the writings on the margins, as distinguished from the writing at the bottom of the page, were placed there at different times. The defendants contend from the evidence that they were placed there at the same time.

115 Now, it will be one of your problems to determine that fact if it becomes necessary for a determination of that fact, in concluding whether or not Mr. Gunzbourg, at the time he placed those writings on Exhibits 1-A and 1-B, did or did not intend to effectuate a will.

Is that sufficient, gentlemen?

MR. AULETTE: Satisfactory, Your Honor

MR. BRYLAWSKI: Yes, if the Court please.

MR. SIEGLER: Yes, Your Honor.

THE COURT: You may take the case.

Mr. Clerk, give the interrogatory to the jury.

THE DEPUTY CLERK: Yes, Your Honor.

(The interrogatory was handed to the jury.)

THE COURT: Madam Alternate Juror, you are excused from further consideration in this case with the Court's gratitude for listening so attentively and being ready to fill in, if necessary. You are excused.

Thereupon, the jury retired to the jury room at 12:40 o'clock p. m. to consider of its verdict.

(Thereupon, at 3:35 o'clock p.m., the jury returned to the courtroom.)

THE DEPUTY CLERK: Mr. Foreman, has the jury agreed upon a verdict?

THE FOREMAN: We have.

THE DEPUTY CLERK: Mr. Foreman, was the will marked 1953
116 duly executed by the decedent in accordance with the requirements of law?

THE FOREMAN: No.

THE DEPUTY CLERK: Members of the jury, your foreman says that, in answer to the question, "Was the will marked 1953 duly executed by the decedent in accordance with the requirements of law?" that your answer is no, and that is your verdict, so say you each and all?

(The jurors nodded assent.)

THE COURT: Mr. Foreman, will you be good enough to sign that paper, if you haven't done so, and also put your title under your name for the file.

(The foreman signed the document as foreman of the jury.)

THE COURT: The Court will stand adjourned until tomorrow morning at 10:00 0'clock.

* * * * *

FILED

108
1943 Will

I, PAUL M. GUNZBOURG, residing in the Borough of Manhattan, City and State of New York, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils by me heretofore made.

FIRST

I direct that all transfer, inheritance, succession or excise taxes payable by my estate or on any devise or legacy hereunder shall be paid out of my general estate.

SECOND

I give, devise and bequeath sixty per centum (60%) of all property situate in France and Belgium, of whatsoever kind and nature, which may belong to me or to which I or my estate may be or become entitled, to my nephew, Georges Rotvand, or his issue in equal shares per stirpes, and the balance of forty per centum (40%) thereof to my brother, Jules Gunzbourg, or his issue in equal shares per stirpes.

THIRD

I give, devise and bequeath all property situate in Russia, of whatsoever kind or nature, which may belong to me or to which I or my estate may be or become entitled, to my nephew, Georges Rotvand, or his issue in equal shares per stirpes.

FOURTH

I give and bequeath to my friend, Helen Douglas, all my furniture, household goods or supplies, wearing apparel and personal effects situate in New York City, except jewelry, pictures, works of art and antiques which shall become and be distributed as part of my residuary estate as provided in article "FIFTH" hereof.

In the event that said Helen Douglas shall not wish a part of the same, I give and bequeath that part thereof to my brother, Jules Gunzbourg, or if he shall predecease me, to his wife, Catherine Gunzbourg, or if both of them shall predecease me, to their son, Maxim J. Gurney, or his issue in equal shares per stirpes.

FIFTH

I give, devise and bequeath all the rest, residue and remainder of my estate, of whatsoever kind and nature, and wheresoever situate, which may belong to me or to which I or my estate may be or become entitled, to my executors and trustees hereinafter named, and their successors, to have and to hold the same for the following uses and purposes:

(a) In the event that both of my mother, Eugenie Gunzbourg, and my friend, Helen Douglas, shall survive me, and my net residuary estate, after the payment of legacies,

funeral and administration expenses, debts, taxes and all other charges against my estate, shall, as of the date of my death, exceed the sum of twenty-five thousand dollars ($25,000) over and above the amount or value of any funds, securities or property of any kind or nature whatsoever, wheresoever situate, which may be held in a blocked account or which for any similar or other reason may not be possessed and distributed by my trustees, to pay sixty per centum (60%) of such excess to my brother, Jules Gunzbourg, or his issue in equal shares per stirpes, and the balance of forty per centum (40%) of such excess to my nephew, Georges Rotvand, or his issue in equal shares per stirpes.

(b) In the event that either of said Eugenie Gunzbourg or Helen Douglas shall predecease me, and my aforesaid net residuary estate shall, as of the date of my death, exceed the sum of fifteen thousand dollars ($15,000), over and above the amount or value of any funds, securities or property of any kind or nature whatsoever, wheresoever situate, which may be held in a blocked account or which for any similar or other reason may not be possessed and distributed by my trustees, to pay sixty per centum (60%) of such excess to said Jules Gunzbourg or his issue in equal shares per stirpes, and the balance of forty per centum (40%) of such excess to said Georges Rotvand or his issue in equal shares per stirpes.

Wm 3

(c) To invest and reinvest the principal, and to collect the income thereof; and after paying out of such income all expenses of administering said trust and all taxes payable thereon, to pay or apply so much of the remaining net income and such portion of the principal as may be necessary in the sole discretion of my trustees for the proper support, comfort and maintenance and to the use of said Eugenie Gunzbourg and said Helen Douglas, or either of them as the case may be, for and during their respective lives, but in no event shall such payments be less than one hundred dollars ($100) per month to each of them.

(d) In the event that all the net income during any one year shall not be so paid or applied to the use of said Eugenie Gunzbourg and Helen Douglas, or either of them, to pay sixty per centum (60%) of any such net income then remaining to said Jules Gunzbourg or his issue in equal shares per stirpes, and the balance of forty per centum (40%) thereof to said Georges Rotvand or his issue in equal shares per stirpes.

(e) Upon the death of either of said Eugenie Gunzbourg or Helen Douglas, and in the event that my aforesaid net residuary estate shall, as of the date of the death of the one so dying, exceed the sum of fifteen thousand dollars ($15,000) over and above the amount or

value of any funds, securities or property of any kind or nature whatsoever, wheresoever situate, which may be held in a blocked account or which for any similar or other reason may not be possessed and distributed by my trustees, to pay sixty per centum (60%) of such excess to said Jules Gunsbourg or his issue in equal shares per stirpes, and the balance of forty per centum (40%) of such excess to said Georges Rotvand or his issue in equal shares per stirpes.

(f) Upon the death of the one of said Eugenie Gunsbourg or Helen Douglas last dying, to pay sixty per centum (60%) of any principal remaining and any accumulated income to said Jules Gunsbourg or his issue in equal shares per stirpes, and the balance of forty per centum (40%) thereof to said Georges Rotvand or his issue in equal shares per stirpes.

SIXTH

I nominate, constitute and appoint my attorney, Albert A. Friedlander, and my brother, Jules Gunsbourg, as executors of this Will and trustees of the trust hereinbefore created.

If said Jules Gunsbourg shall predecease me or for any reason whatsoever shall refuse or fail to act, I nominate, constitute and appoint his son, Maxim J. Gurney, as executor and trustee in his place and stead.

If both of said Jules Gunzbourg and Maxim J. Gurney shall predecease me or for any reason whatsoever shall refuse or fail to act, I nominate, constitute and appoint my said brother's wife, Catherine Gunzbourg, as executor and trustee in their place and stead.

If for any reason whatsoever only one of my aforesaid executors and trustees shall qualify and act, I authorize and empower him to exercise all powers herein given to my executors and trustees.

SEVENTH

I direct that none of my aforesaid executors or trustees shall be required to give any bond or other security for the performance of their duties as such in any jurisdiction, any law to the contrary notwithstanding.

EIGHTH

I authorize and empower my executors or trustees to sell, exchange, convey, mortgage or lease for less or more than five (5) years, any property, real or personal, held by me at the time of my death or constituting any part of the principal of the trust hereinbefore created, upon such terms as they, in their sole discretion, may deem proper; to hold any of such property, including any interest in any business in which I may be engaged at the time of my

death, for such length of time as they, in their sole discretion, may deem proper without regard to the market price thereof, any lack of income therefrom or any default in the payment of dividends or interest thereon; and to distribute any of such property in kind and at such valuations as they, in their sole discretion, may deem proper, and the valuations so fixed by them shall be binding and conclusive upon all persons interested in my estate.

I direct that my trustees shall not be restricted or limited to the class of securities in which trustees are authorized by law to invest trust funds, but that they shall have the right and authority, in their sole discretion and without any liability, to invest and reinvest any part of the principal of the trust hereinbefore created in such securities as they may deem proper.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 11th day of February, 1943.

Paul M. Young (L.S.)

Witnesses

Albert A. Friedlander

Irene Goldfarb

F. Clarence Jacoff

The foregoing instrument, consisting of seven typewritten pages, was signed and sealed at the end thereof and

published and declared by the above named testator, PAUL M. GUNZBOURG, as and for his Last Will and Testament, in the presence of each of us, and thereupon we, at his request, in his presence and in the presence of each other, did sign our names as witnesses thereto, this 11th day of February, 1943.

Albert A. Friedlander residing at 1830 Albemarle Road, Brooklyn, N.Y.

Fred Gelfast residing at 456 Brooklyn Ave. Brooklyn, N.Y.

F Corcoran Jaeff residing at 1902 Cortelyou Rd Brooklyn N.Y.

116
1951 Will

FILED
JUN 17 1954.
THEODORE COGSWELL
REGISTER OF WILLS, D.C.
Clerk of Probate Court

I, PAUL M. GUNZBOURG, ~~residing in the Borough of Manhattan, City and State of New York~~, do hereby make, publish and declare this to be my last Will and Testament, hereby revoking all Wills and Codicils by me heretofore made, particularly my last Will of February 11, 1943, deposited at the office of Albert A. Friedlander, Attorney-at-law, 25 Broad Street, New York, New York, which is superseded by this will.

FIRST

I direct that all transfer, inheritance, succession or excise taxes payable by my estate or on any devise or legacy hereunder shall be paid out of my general estate.

SECOND

I give, devise and bequeath fifty per centum (50%) of all property situate in Belgium and France, of whatsoever kind and nature, which may belong to me or to which I or my estate may become entitled, to my nephew, Georges Rotvand, or his issue in equal shares per stirpes, and the balance of fifty per centum thereof to my nephew, Maxim J. Gurney, or his issue in equal shares per stirpes.

THIRD

Should ever my own property, or that of my late wife, Lydia GUNZBOURG, born Peniakoff, that would have been inherited by her as only heir of her father, Simon I. Peniakoff, deceased in Brussels (Belgium) in 1926, become seizable or refundable by any Russian government, this property, situated in Russia, of whatsoever kind or nature, I hereby give, devise and bequeath to my nephew, Georges Rotvand, or his issue in equal shares per stirpes.

FOURTH

Should my friend, Helen Douglas, now domiciled with me, survive me, I hereby request that a sufficient sum to pay her living expenses and burial in case of decease, be retained by the executors of this will before any distribution is made.

FIFTH

I give, devise and bequeath the proceeds of all my furniture, collection of antiques, antique and modern books, to my sister-in-law, Catherine Gunzbourg, widow of my brother, Jules Gunzbourg, deceased in New York in 1950, or, if she should predecease me, to her son, Maxim J. Gurney, or his issue in equal shares per stirpes.

However, I desire that all objects of artistic or antique value should be kept by either of these aforementioned for safekeeping or sold as a complete collection at a special sale in the Parke-Bernet Galleries in New York as my legacy, but, preferably, not in separate lots in different sales.

SIXTH

I give, devise and bequeath all the rest, remainder and residue of my estate, of whatsoever kind and nature, and wheresoever situate, which may belong to me or to which I or my estate may be or become entitled, to my executors and trustees hereinafter named, and their successors, to have and to hold the same for the following uses and purposes:

a) In the event that my friend, Helen Douglas, shall survive me, and my net residuary estate, after payment of legacies, funeral and administration expenses, debt, taxes and all other charges against my estate, shall, as of the date of my death, exceed the sum of $10,000 (ten thousand dollars) over and above the amount or value of any funds, securities or property of any kind or nature whatsoever, wheresoever situate, which may be held in a blocked account or which for any similar or other reason may not be possessed and distributed by my trustees, to pay sixty per centum (60%) of such excess to my sister in law or her issue, and the balance of 40% (forty per centum) of such excess to my nephew, Georges Rotvand, or his issue in equal shares per stirpes.

b) In the event that my friend, Helen Douglas, shall predecease me, the paragraph a) of item FIFTH shall be null and void and all my estate under the aforesaid conditions shall be distributed as follows:

Sixty per centum (60%) to my sister-in-law, Catherine Gunsbourg or her son Maxim J. Gurney and forty per centum (40%) to my nephew, Georges Rotvand, or his issue in equal shares per stirpes.

c) To invest and reinvest the principal, and to collect the income thereof; and after paying out of such expenses of administering said trust and all taxes payable thereon, to pay or apply so much of the remaining net income and such portion of the principal as may be necessary in the sole discretion of my trustees for the proper support of said Helen Douglas.

d) In the event that all the net income during any one year shall not be so paid or applied to the use of said Helen Douglas, to pay sixty per centum (60%) of any such income then remaining to said Catherine Gunzbourg or her issue, and the balance of forty per centum (40%) thereof to said Georges Rotvand or his issue in equal shares per stirpes.

e) Upon the death of said Helen Douglas my aforesaid net residuary estate shall, as of the date of her death, and after paying her funeral expenses, ... be distributed sixty per centum (60%) to said Catherine Gunzbourg or her son Maxim J. Gurney, and forty per centum to said Georges Rotvand or his issue in equal shares per stirpes.

f) As to the jewelry, I give devise and bequeath it as follows:

Diamond solitaire ring, emerald ring with diamonds, emerald brooch, two oriental pearl necklaces, pendant of one oriental baroque pearl, two pearl rings, and one white gold ring with moonstone, to my nephew, Georges Rotvand, his wife or his issue in equal shares per stirpes.

All the rest of the jewelry, including diamond clip, antique bracelets, antique ring, moonstone Fabergé cufflinks and studs, antique gold box, antique gold watch, Chinese-type gold box, pink pearl brooch with diamond, and pearl tie-pin, to my nephew, Maxim J. Gurney or his issue in equal shares per stirpes.

The remaining smaller items might be distributed in the proportion decided by the trustee or trustees.

I nominate constitute and appoint my sister-in-law, Catherine Gunsbourg, and my nephew, Marcia J. Gurney, as executors of this will and trustees of the trust herein created, if Helen Dodge survives me.

If said Catherine Gunsbourg should predecease her son, my nephew, Marcia J. Gurney, I nominate, constitute and appoint said Marcia J. Gurney, as executor and trustee in the place and stead of said Catherine Gunsbourg.

If, for any reason whatsoever, only one of my aforesaid executors and trustees shall qualify and act, I authorize and empower him to exercise all powers herein given to my executors and trustees.

EIGHTH

I direct that none of my aforesaid executors and trustees shall be required to give any bond or other security for the performance of their duties as such in any jurisdiction, any law to the contrary notwithstanding.

NINTH

I authorize and empower my executors or trustees to sell, exchange, convey, mortgage or lease for less or more than five (5) years, any property, real or personal, held by me at the time of my death or constituting any part of the principal of the trust hereinbefore created, upon such terms as they, in their sole discretion, may deem proper; to hold any of such property, including any interest in any business in which I may be engaged at the time of my death, for such length of time as they, in their sole discretion, may deem proper without regard to the market price thereof, any lack of income therefrom or any default in the payment of dividends or interest thereon; and to distribute any of such property in kind and at such valuations as they, in their sole discretion, may deem proper, and the valuations so fixed by them shall be binding and conclusive upon all persons interested in my estate.

I direct that my trustees shall not be restricted or limited to the class of securities in which trustees are authorized by law to invest trust funds, but that they shall have the right and authority, in their sole discretion and

without any liability, to invest and reinvest any part of the principal of the trust hereinbefore created in such securities as they may deem proper.

In witness whereof, I have hereunto set my hand and seal this 8th day of June, 1951.

Paul M. Gunzbourg L.S.

Witnesses

Eleanor A. Landsman

C Rogivue

The foregoing instrument, consisting of five typewritten pages, was signed and sealed at the end thereof and published and declared by the above-named testator, PAUL M. GUNZBOURG, as and for his Last Will and Testament, in the presence of each of us, and thereupon we, at his request and in the presence of each other, did sign our names as witnesses thereto, this 8th day of June 1951.

Eleanor A. Landsman residing at 57 St. Paul's Place, Brooklyn, N.Y.

Isaac Lourie residing at 10 East 85th Street, New York, N.Y.

Christine Rogivue residing at 12 West 76th Street, New York, N.Y.

Original

121
1952 Will

PL'S EX.
FOR ID.

FILED
JAN 7 - 1957
THEODORE COGSWELL
REGISTER OF WILLS, D. C.
Probate Court

I, Paul M. GUNZBOURG, residing in the Borough of Manhattan, City and State of New York, do hereby make, publish and declare this to be my last Will and Testament, hereby revoking all Wills and Codicils by me heretofore made, particularly my last Will of February 11, 1943, deposited at the office of Albert A. Friedlander, Attorney-at-law, 25 Broad Street, New York and my Will of June 8, 1951 both of which are superseded by this Will.

FIRST

I direct that all transfer, inheritance, succession or excise taxes payable by my estate or on any devise or legacy hereunder shall be paid out of my general estate.

SECOND

I give, devise and bequeath fifty per centum (50%) of all property situate in Belgium and France, of whatsoever kind and nature, which may belong to me or to which I or my estate may become entitled, to my nephew, Georges Rotvand, or his issue in equal shares per stirpes, and the balance of fifty per centum thereof to my nephew, Maxim J. Gurney, or his issue in equal shares per stirpes.

THIRD

Should ever my own property, or that of my late wife, Lydia GUNZBOURG, born Peniakoff, that would have been inherited by her as only heir of her father, Simon I. Peniakoff, deceased in Brussels (Belgium) in 1926, become totally or partly seizable or refundable by any Russian government, this property, situated in Russia, of whatsoever kind or nature, I hereby give, devise and bequeath to my wife's nephew, Georges Rotvand, as only heir of my late wife Lydia Peniakoff-GUNZBOURG, or his issue in equal shares per stirpes.

FOURTH

Should my friend, Helen Douglas, now over 80, survive me, I hereby request that a sum of $5.000.00 (FIVE THOUSAND) readily available in the USA from capital in the USA or from dividends in the USA or from dividends of a blocked account at the Bank of Samuel Montagu & Company, 114 Old Broad Street, London EC2 (England)

but tranferable according to Law to my account at the Chase Bank as it is done now, should be set aside to pay her living expenses and burial in case of decease, being retained by the executors of this will before any distribution is made.

FIFTH

I give, devise and bequeath all my furniture, paintings, prints, miniatures, enamels and objets de vertu, collection of antiques, antique and modern books or proceeds of the sale of them, to my sister-in-law, Catherine GUNZBOURG-GURNEY widow of my brother Jules M. GUNZBOURG deceased in New York in 1950, or/and to her son, Maxim J. Gurney or his issue in equal shares per stirpes.
I prefer that all objects and books of artistic and antique value that will remain unsold at my death should be kept either by the aforementioned for safekeeping or sold if possible as a complete collection at a special sale preferably in the Parke-Bernet Galleries in New York as my legacy, but, preferably, not in separate lots in different sales. However, this with the exception of items having no artistic market value of which the aforementioned heirs may dispose at will.

SIXTH

I give, devise and bequeath all the rest, remainder and residue of my estate, of whatsoever kind and nature, and wheresoever situate, which may belong to me or to which I or my estate may be or become entitled, to my executors and trustees hereinafter named, and their successors, to have and to hold the same for the following uses and purposes :

a) In the event that Helen Douglas shall survive me and my net residuary estate, after payment of legacies, funeral and administration expenses, debt, taxes and all other charges against my estate, shall, as of the date of my death, exceed the sum of $5000.00 (FIVE THOUSAND DOLLARS) available in the USA as mentioned in paragr. FOURTH the amount or value of any funds, securities or property of any kind or nature whatsoever, wheresoever situate may be distributed by my trustees to pay 60% of such excess over $5000.00 available in the USA to my

sister-in-law and/or her son or his issue and the balance of 40% of such excess to the nephew of my wife, Georges Rotvand of Paris, and his issue in equal shares per stirpes.

As to the property or capital in blocked account abroad mentioned before, I bequest 60% to the same Catherine GUERBOURG-GURNEY and/or her son, Maxim J. Gurney and 40% to the same Georges Rotvand of Paris or his issue.

b) In the event my friend, Helen Douglas, would predecease me, the paragr. FOURTH and Item a) of paragr. FIFTH shall be null and void and all my estate under the aforesaid conditions shall be distributed as follows :

60% to my sister-in-law and/or her son -
40% to my wife's nephew, Georges Rotvand, or his issue

in equal shares per stirpes, with the exception of the furniture and antiques, as per paragr. FIFTH, that I bequested already totally to my brother's survivors.

c) To invest and reinvest the principal, and to collect the income thereof, if they so desire, and after paying out of such expenses of administering said trust and all taxes payable thereon, to pay or apply so much of the remaining net income and such portion of the principal as may be necessary in the sole discretion of my trustees for the proper support of said Helen Douglas if the sum of $5000.00 will be spent before her death.

d) In the event that all the net income in the USA and abroad during any one year shall not be so paid or applied to the use of said Helen Douglas, to pay 60% of any such income then remaining to said Catherine GUERBOURG-GURNEY and/or her son Maxim J. Gurney and the balance of 40% thereof to said Georges Rotvand or his issue in equal shares per stirpes.

e) Upon the death of said Helen Douglas my aforesaid net residuary estate shall, as of the date of her death, and after paying her funeral expenses, be distributed as follows : 60% to said Catherine GUERBOURG-GURNEY and/or her son Maxim J. Gurney, and 40% to said Georges Rotvand or his issue in equal shares per stirpes.

f) As to the jewelry which will remain unsold by me at my death, I give devise and bequeath it as follows from items that will be available at my death :
Diamond solitaire ring, emerald ring with diamonds, emerald brooch, oriental pearl necklace, to my nephew, Georges Rotvand or his issue in equal shares per stirpes.
All the rest of the jewelry consisting now of :
Diamond clip, antique bracelets, solitaire pearl ring, pendant of oriental baroque pearl, white gold ring with moonstone, antique ring, moonstone Fabergé cufflinks and studs, antique gold box, antique gold watch, Chinese-type gold box, pink pearl brooch with diamond, and pearl tie-pin, to my nephew, Maxim J. Gurney or his issue in equal shares per stirpes.
The remaining smaller items might be distributed in the proportion decided by the executors, trustee or trustees.

SEVENTH

I nominate constitute and appoint my sister-in-law, Catherine GURZBOURG-GURNEY and/or my nephew, Maxim J. Gurney, as executors of this will and trustees of the trust herein created, if Helen Douglas survives me.
If said Catherine GURZBOURG-GURNEY should predecease her son, my nephew, Maxim J. GURNEY, I nominate, constitute and appoint said Maxim J. Gurney, or persons of his choice, as executor and trustee in the place and stead of said Catherine GURZBOURG-GURNEY.
If, for any reason whatsoever, any one of my aforesaid executors and trustees shall qualify and act, I authorise and empower him or them to exercise all powers herein given to my executors and trustees.

EIGHTH

I direct that none of my aforesaid executors and trustees shall be required to give any bond or other security for the performance of their duties as such in any jurisdiction, any law to the contrary notwithstanding.

FILED

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NINTH

I authorize and empower my executors or trustees to sell, exchange, mortgage or lease for less or more than five (5) years, any property, real or personal, held by me at the time of my death or constituting any part of the principal of the trust hereinbefore created, upon such terms as they, in their sole discretion, may deem proper; to hold any of such property, including any interest in any business in which I may be engaged at the time of my death, for such length of time as they, in their sole discretion, may deem proper without regard to the market price thereof, any lack of income therefrom or any default in the payment of dividends or interest thereon; and to distribute any of such property in kind and at such valuations as they, in their sole discretion, may deem proper, and the valuations so fixed by them shall be binding and conclusive upon all persons interested in my estate.

I direct that my trustees shall not be restricted or limited to the class of securities in which trustees are authorized by law to invest trust funds, but that they shall have the right and authority, in their sole discretion and without any liability, to invest and reinvest any part of the principal of the trust hereinbefore created in such securities as they may deem proper.

In witness hereof, I have hereunto set my hand and seal this day of February 1952.

Paul M. Zuckerbound

Witnesses:

Sophie SCHERBATOFF Sophie Scherbatoff

Peter A. PLETNIOFF P.A. Pletnioff

Alexander H. SCHAPIRO Alexander H. Schapiro

The foregoing instrument, consisting of five typewritten pages, was signed and sealed at the end thereof and published and declared by the above-named testator, Paul M. ZUCKERBOUND, as and for his last Will and Testament, in the presence of each of us and thereupon we, at his request and in the presence of each other, did sign our names as witnesses thereto, this day of February 1952.

Sophie SCHERBATOFF residing at 30 East 62nd Street, New York, N.Y.

Peter A. Pletnioff residing at 236 East 39th Street, New York, N.Y.

Alexander H. SCHAPIRO residing at 602 West 139th Street, New York, N.Y.

SIGNATURE OF WITNESSES

Sophie Sekerbatoff

P.T. Pleasants

FILED

JAN 7 - 1957

THEODORE COGSWELL
REGISTER OF WILLS D.C.
Clerk of Probate Court

Whichever copy of this my will, whether the original, the duplicate or the triplicate will be found after my death, last of them shall be considered as my original will

Paul A. Young

Admitted to probate and recorded

JUL 19 1957

FILED
JUL 19 1957
THEODORE COGSWELL
REGISTER OF WILLS & Ex-Officio
Clerk of Probate Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding Probate Court

IN RE:
ESTATE OF
PAUL M. GUNZBOURG,
Deceased.

Administration No. 85,608

Dec 179

ORDER AND DECREE UPON VERDICT GRANTING PROBATE TO WILL DATED FEBRUARY 1952 AND DENYING PROBATE TO WILL MARKED "1953"

The preliminary issue framed in this proceeding upon the caveats and the answers thereto, having been tried in open court, and the jury having, by direction of the Court, answered said preliminary issue in the affirmative, and by stipulation of the parties a special interrogatory having been duly submitted to the jury for determination in lieu of the five regular issues framed herein, and the said jury on June 26, 1957 having answered the special interrogatory, to wit:

> "Was the will marked '1953' duly executed by the decedent in accordance with the requirements of law?"

in the negative, and the jury thus having found upon their answers to the preliminary issue and to the special interrogatory under the regular issues that the paper writing bearing date the (blank) day of February, 1952, is the last will and testament of Paul M. Gunzbourg, deceased, and upon consideration of the petition previously filed by Catherine Gunzbourg-Gurney for probate and letters testamentary, and further upon consideration of the attested renunciation of Maxim J. Gurney renouncing all his right, title and interest as a nominated co-executor under said will, it is by the

Court, this 19th day of July , 1957,

Adjudged, Ordered and Decreed, that the said will of Paul M. Gunzbourg, deceased, dated the (blank) day of February, 1952, be and the same is hereby admitted to probate and record as a will of both real and personal property without regard to the pencilled writing superimposed on page one thereof reading "Superceded by a new testament", and that letters testamentary thereunder be and they are hereby granted and shall issue to Catherine Gunzbourg-Gurney, the co-executrix named in said will, provided she first files her undertaking in the penal sum of ~~Forty-five hundred~~ Six thousand dollars ($ ~~4,500.00~~ 6,000.00)with surety approved by the Court, conditioned for the faithful performance of her trust and provided she files the power of attorney required of non-residents; and it is further

Adjudged, Ordered and Decreed, that the prayers of the petition of Eugene Corrao for probate and record of the paper writing marked "1953" filed in this proceeding purporting to be the last will and testament of Paul M. Gunzbourg, deceased, be and are hereby denied, and that said paper writing marked "1953" purporting to be the last will and testament of Paul M. Gunzbourg, deceased, be and the same is hereby denied probate.

Judge

Seen and Objected To
Emilio L. Galletta
Attorney for Eugene Corrao

128A
1953 WILL
RIBBON COPY

JUN 17 1954

THEODORE COGSWELL
REGISTER OF WILLS, D.C.

-1-

I, PAUL M. GUNZBOURG, residing at 1801 Clydesdale Place, N.W., Washington, D.C. do hereby declare this to be my last will and testament, hereby revoking all wills and codicils heretofore made by me, particularly my previous wills of February 11, 1943 and June 8, 1951 which are superseded by this will.

FIRST

I direct that all taxes payable by my estate and all expenses incurred by the executor of the will, legal or otherwise, and my debts and funeral expenses be paid out of the general estate by the executor prior to all distribution.

SECOND

The executor, Eugene Correa, shall receive before the distribution to the two principal legatees a minimum of one thousand dollars ($1,000.00) if the total amount of the estate after deduction of expenses does not exceed ten thousand dollars ($10,000.00) and five percent additional of any amount in excess of ten thousand dollars ($10,000.00).

Mrs. Adrienne Paduh residing at 2900 Adams Mill Road, N.W., Washington, D.C., shall receive three hundred dollars ($300.00) in cash or approximately three hundred dollars ($300.00) in value as may be decided by the executor.

THIRD

I give, devise and bequeath to my nephew MAXIM J. GURNEY residing temporarily in Rome, Italy, but having a permanent residence at 135 W. 58th Street, New York, N.Y., or if he predecease me to his issue in equal shares per stirpes, sixty percent (60%) of the balance of my estate after coverage of the payments under "FIRST" and "SECOND" sections above.

I give, devise and bequeath to my wife's nephew GEORGES ROTVAND residing at 4 rue Octave, Feuillet, Paris, France, or if he predecease me to his issue in equal stirpes, forty percent (40%) of the balance of my estate after coverage of the payments under "FIRST" and "SECOND" sections above.

FOURTH

Should ever my collections in Leningrad, or the real estate in the Caucasus of my late wife LYDIA GUNZBOURG, born Peniakoff, that would have been inherited by her as the only heir of her father, Simon I. Peniakoff, attorney at law in St. Petersburg, deceased in Brussels (Belgium) in 1926, become seizable or refundable by any Russian government, this property, situated in Russia, of whatsoever kind or nature, I hereby give, devise and bequeath to my wife's nephew GEORGES ROTVAND, or if he be deceased to his issue in equal shares per stirpes.

FIVE

I desire, if possible, that the part of my estate consisting of my furniture, collection of antiques, antique and modern books and furnishings be sold at a public auction at the Parke-Bernet Gallaries in New York with a catalogue indicating the sale being held by The Estate of Paul M. Gunsbourg of New York, and the proceeds should be added to the total of the estate to be distributed to the two principal legatees as indicated in the "THIRD" section.

However, if it should be too difficult to organize a sale of the full collection in a one full day sale, I leave it to the discretion of the executor how a part or the total collection should be disposed of, always maintaining the rate at which the distribution in cash or in unsold objects should be divided between the two principal legatees (see "THIRD" section).

SIX

That all jewelry or other personal property that I may leave as part of the estate should be distributed in the same proportion and to the same beneficiaries as indicated in the "THIRD" section. The executor is authorized to use his own discretion as to how it should be distributed either in cash or in nature after an adequate appraisal.

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SEVEN

I hereby nominate, constitute and appoint Eugene Correo, as executor of this will who resides at 353 Grove Street, Brooklyn, N. Y.

EIGHT

I direct that my executor shall not be required to give any bond or any other security for the performance of his duties, as such, in any jurisdiction.

NINE

I authorize and empower my executor to sell, exchange, convey, mortgage or lease for less or more than five (5) years, any property held by me at the time of my death as he, in his sole discretion, may deem proper; to hold any of such property, including any interest in any business in which I may be engaged at the time of my death, for such length of time as he, in his sole discretion, may deem proper without regard to the market price thereof, any lack of income therefrom or any default in the payment of dividends or interest thereon; and to distribute any of such property in kind and at such valuations as he, in his sole discretion, may deem proper, and the valuations so fixed by him shall be binding and conclusive upon the two principal legatees of my estate.

I direct that my executor shall not be restricted or limited to the class of securities in which he may be required by law to invest funds, but that he shall have the right and authority, in his sole discretion and without any liability, to invest and reinvest any part of the principal of the estate in such securities as he may deem proper.

TEN

I wish that my remains be buried in the same grave 4242, Section PLC, at Flushing Cemetery, Flushing, N.Y., with those of my dear beloved wife--LYDIA GUNZBOURG. The existing headstone should be additionally inscribed "Her husband, PAUL M. GUNZBOURG, born in St. Petersburg, Russia, deceased in __(Place)__, on __(Date)__". The executor

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is authorized to set aside any amount which in his sole discretion he may deem proper for the care of the grave. Religious services at my funeral may be held at the discretion of the executor.

In witness hereof, I have hereunto set my hand and seal this _____ day of _____, 1953.

_____(L.S.)
PAUL M. GUNZBOURG

Witnesses
Catherine Gunzbourg-Gurney
Claude E Badoux
Adrienne L. Pahud,

The foregoing instrument, consisting of four (4) typewritten pages, was signed and sealed at the end thereof and published and declared by the above-named testator, PAUL M. GUNZBOURG, as and for his Last will and Testament, in the presence of each of us, and thereupon we, at his request and in the presence of each other, did sign our names as witnesses thereto, this _____ day of _____, 1953.

Catherine Gunzbourg-Gurney residing at 135 W. 58th New York, N.Y.

Claude E Badoux residing at 2800 Adams Mill Rd NW Washington D.C.

Adrienne L. Pahud residing at 2800 Adams Mill Rd N.W. Washington D.C.

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1953 Will. Carbon Copy bearing signatures of decedent and two witnesses

-1-

JUN 17 1954

THEODORE COGSWELL
REGISTER OF WILLS, D. C.

I, PAUL M. GUERBOURG, residing at 1601 Clydesdale Place, N.W., Washington, D.C., do hereby declare this to be my last will and testament, hereby revoking all wills and codicils heretofore made by me, particularly my previous wills of February 11, 1943 and June 8, 1951 which are superseded by this will.

FIRST

I direct that all taxes payable by my estate and all expenses incurred by the executor of the will, legal or otherwise, and my debts and funeral expenses be paid out of the general estate by the executor prior to all distribution.

SECOND

The executor, Eugene Correa, shall receive before the distribution to the two principal legatees a minimum of one thousand dollars ($1,000.00) if the total amount of the estate after deduction of expenses does not exceed ten thousand dollars ($10,000.00) and five percent additional of any amount in excess of ten thousand dollars ($10,000.00).

Mrs. Adrienne Rachat residing at 2900 Adams Mill Road, N.W., Washington, D.C., shall receive three hundred dollars ($300.00) in cash or approximately three hundred dollars ($300.00) in value as may be decided by the executor.

THIRD

I give, devise and bequeath to my nephew MAXIM J. GUERBY residing temporarily in Rome, Italy, but having a permanent residence at 135 W. 58th Street, New York, N.Y., or if he predecease me to his issue in equal shares per stirpes, sixty percent (60%) of the balance of my estate after coverage of the payments under "FIRST" and "SECOND" sections above.

I give, devise and bequeath to my wife's nephew GEORGES ROTVAND residing at 4 rue Octave. Feuillet, Paris, France, or if he predecease me to his issue in equal stirpes, forty percent (40%) of the balance of my estate after coverage of the payments under "FIRST" and "SECOND" sections above.

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FOURTH

Should ever my collections in Leningrad, or the real estate in the Caucasus of my late wife LYDIA GUNSBOURG, born Peniakoff, that would have been inherited by her as the only heir of her father, Simon I. Peniakoff, attorney at law in St. Petersburg, deceased in Brussels (Belgium) in 1926, become seizable or refundable by any Russian government, this property, situated in Russia, of whatsoever kind or nature, I hereby give, devise and bequeath to my wife's nephew GEORGES ROTVAND, or if he be deceased to his issue in equal shares per stirpes.

FIVE

I desire, if possible, that the part of my estate consisting of my furniture, collection of antiques, antique and modern books and furnishings be sold at a public auction at the Parke-Bernet Gallaries in New York with a catalogue indicating the sale being held by The Estate of Paul M. Gunsbourg of New York, and the proceeds should be added to the total of the estate to be distributed to the two principal legatees as indicated in the "THIRD" section.

However, if it should be too difficult to organise a sale of the full collection in a one full day sale, I leave it to the discretion of the executor how a part or the total collection should be disposed of, always maintaining the rate at which the distribution in cash or in unsold objects should be divided between the two principal legatees (see "THIRD" section).

SIX

That all jewelry or other personal property that I may leave as part of the estate should be distributed in the same proportion and to the same beneficiaries as indicated in the "THIRD" section. The executor is authorised to use his own discretion as to how it should be distributed either in cash or in nature after an adequate appraisal.

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SEVEN

I hereby nominate, constitute and appoint Eugene Correa, as executor of this will who resides at 353 Grove Street, Brooklyn, N. Y.

EIGHT

I direct that my executor shall not be required to give any bond or any other security for the performance of his duties, as such, in any jurisdiction.

NINE

I authorize and empower my executor to sell, exchange, convey, mortgage or lease for less or more than five (5) years, any property held by me at the time of my death as he, in his sole discretion, may deem proper; to hold any of such property, including any interest in any business in which I may be engaged at the time of my death, for such length of time as he, in his sole discretion, may deem proper without regard to the market price thereof, any lack of income therefrom or any default in the payment of dividends or interest thereon; and to distribute any of such property in kind and at such valuations as he, in his sole discretion, may deem proper, and the valuations so fixed by him shall be binding and conclusive upon the two principal legatees of my estate.

I direct that my executor shall not be restricted or limited to the class of securities in which he may be required by law to invest funds, but that he shall have the right and authority, in his sole discretion and without any liability, to invest and reinvest any part of the principal of the estate in such securities as he may deem proper.

TEN

I wish that my remains be buried in the same grave 42&2, Section PLC, at Flushing Cemetery, Flushing, N.Y., with those of my dear beloved wife—LYDIA GUNZBOURG. The existing headstone should be additionally inscribed "Her husband, PAUL M. GUNZBOURG, born in St. Petersburg, Russia, deceased in __(Place)__, on __(Date)__". The executor

is authorized to set aside any amount which in his sole discretion he may deem proper for the care of the grave. Religious services at my funeral may be held at the discretion of the executor.

In witness hereof, I have hereunto set my hand and seal this _____ day of _____, 1953.

_____(L.S.)
PAUL M. GUNZBOURG

Witnesses:

_____

Claude E Badeaux

Adrienne P. Pahud

The foregoing instrument, consisting of four (4) typewritten pages, was signed and sealed at the end thereof and published and declared by the above-named testator, PAUL M. GUNZBOURG, as and for his Last will and Testament, in the presence of each of us, and thereupon we, at his request and in the presence of each other, did sign our names as witnesses thereto, this _____ day of _____, 1953.

_____ residing at _____

Claude E Badeaux residing at 2900 Adams Mill Rd. N.W. Washington D.C.

Adrienne P. Pahud residing at 2900 Adams Mill Rd. N.W. Washington 9. D.C.

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1953 Will. Carbon copy bearing signature of three witnesses

FILED

JUN 17 1954

THEODORE COGSWELL
REGISTER OF WILLS, D. C.
Court of Probate Court

I, PAUL M. GUERIN, residing at 2501 Chesdale Place, N.W., Washington, D.C., do hereby declare this to be my last will and testament, hereby revoking all wills and codicils heretofore made by me, particularly my previous wills of February 11, 1943 and June 8, 1951 which are superseded by this will.

FIRST

I direct that all taxes payable by my estate and all expenses incurred by the executor of the will, legal or otherwise, and my debts and funeral expenses be paid out of the general estate by the executor prior to all distribution.

SECOND

The executor, Eugene Correa, shall receive before the distribution to the two principal legatees a minimum of one thousand dollars ($1,000.00) if the total amount of the estate after deduction of expenses does not exceed ten thousand dollars ($10,000.00) and five percent additional of any amount in excess of ten thousand dollars ($10,000.00).

Mrs. Adrienne Pasha residing at 2900 Adams Mill Road, N.W., Washington, D.C., shall receive three hundred dollars ($300.00) in cash or approximately three hundred dollars ($300.00) in value as may be decided by the executor.

THIRD

I give, devise and bequeath to my nephew MAXIM J. GUERIN residing temporarily in Rome, Italy, but having a permanent residence at 135 W. 58th Street, New York, N.Y., or if he predecease me to his issue in equal shares per stirpes, sixty percent (60%) of the balance of my estate after coverage of the payments under "FIRST" and "SECOND" sections above.

I give, devise and bequeath to my wife's nephew GEORGES ROYARD residing at 4 rue Octave, Feuillet, Paris, France, or if he predecease me to his issue in equal stirpes, forty percent (40%) of the balance of my estate after coverage of the payments under "FIRST" and "SECOND" sections above.

FOURTH

Should ever my collections in Leningrad, or the real estate in the Caucasus of my late wife LYDIA GUNZBOURG, born Peniakoff, that would have been inherited by her as the only heir of her father, Simon I. Peniakoff, attorney at law in St. Petersburg, deceased in Brussels (Belgium) in 1926, become seizable or refundable by any Russian government, this property, situated in Russia, of whatsoever kind or nature, I hereby give, devise and bequeath to my wife's nephew GEORGES ROTVAND, or if he be deceased to his issue in equal shares per stirpes.

FIVE

I desire, if possible, that the part of my estate consisting of my furniture, collection of antiques, antique and modern books and furnishings be sold at a public auction at the Parke-Bernet Galleries in New York with a catalogue indicating the sale being held by The Estate of Paul M. Gunsbourg of New York, and the proceeds should be added to the total of the estate to be distributed to the two principal legatees as indicated in the "THIRD" section.

However, if it should be too difficult to organize a sale of the full collection in a one full day sale, I leave it to the discretion of the executor how a part or the total collection should be disposed of, always maintaining the rate at which the distribution in cash or in unsold objects should be divided between the two principal legatees (see "THIRD" section).

SIX

That all jewelry or other personal property that I may leave as part of the estate should be distributed in the same proportion and to the same beneficiaries as indicated in the "THIRD" section. The executor is authorized to use his own discretion as to how it should be distributed either in cash or in nature after an adequate appraisal.

SEVEN

I hereby nominate, constitute and appoint Eugene Corrao, as executor of this will who resides at 353 Grove Street, Brooklyn, N. Y.

EIGHT

I direct that my executor shall not be required to give any bond or any other security for the performance of his duties, as such, in any jurisdiction.

NINE

I authorize and empower my executor to sell, exchange, convey, mortgage or lease for less or more than five (5) years, any property held by me at the time of my death as he, in his sole discretion, may deem proper; to hold any of such property, including any interest in any business in which I may be engaged at the time of my death, for such length of time as he, in his sole discretion, may deem proper without regard to the market price thereof, any lack of income therefrom or any default in the payment of dividends or interest thereon; and to distribute any of such property in kind and at such valuations as he, in his sole discretion, may deem proper, and the valuations so fixed by him shall be binding and conclusive upon the two principal legatees of my estate.

I direct that my executor shall not be restricted or limited to the class of securities in which he may be required by law to invest funds, but that he shall have the right and authority, in his sole discretion and without any liability, to invest and reinvest any part of the principal of the estate in such securities as he may deem proper.

TEN

I wish that my remains be buried in the same grave 4242, Section FLC, at Flushing Cemetery, Flushing, N.Y., with those of my dear beloved wife—LYDIA GUNZBOURG. The existing headstone should be additionally inscribed "Her husband, PAUL M. GUNZBOURG, born in St. Petersburg, Russia, deceased in __(Place)__, on __(Date)__". The executor

is authorized to set aside any amount which in his sole discretion he may deem proper for the care of the grave. Religious services at my funeral may be held at the discretion of the executor.

In witness hereof, I have hereunto set my hand and seal this _____ day of _____, 1953.

_____(L.S.)
PAUL M. GUIMBOURG

Witnesses:
Catherine Grunsburg-Zunser
Claudet Badoux
Adrienne L. Pakud

The foregoing instrument, consisting of four (4) typewritten pages, was signed and sealed at the end thereof and published and declared by the above-named testator, PAUL M. GUIMBOURG, as and for his Last Will and Testament, in the presence of each of us, and thereupon we, at his request and in the presence of each other, did sign our names as witnesses thereto, this _____ day of _____, 1953.

Catherine Grunsburg-Zunser residing at 135 W. 58 St New York N.Y.

Claudet Badoux residing at 2900 Adams Mill Rd NW Wash. D.C.

Adrienne L. Pakud residing at 2900 Adams Mill Rd N.W. Washington D. C.

BRIEF FOR APPELLEES

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,177

United States Court of Appeals
For the
District of Columbia Circuit
FILED JAN 27 1958
Joseph W. Stewart
Clerk

EUGENE CORRAO,

Appellant,

v.

CATHERINE GUNZBOURG-GURNEY,
Executrix under the Will of Paul M. Gunzbourg, deceased,
and
MAXIM J. GURNEY,

Appellees.

APPEAL FROM ORDERS AND DECREE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA HOLDING A PROBATE COURT

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APPELLEES' STATEMENT OF QUESTIONS PRESENTED

In the opinion of appellees, the questions presented are:

1. Where the sole issue in controversy is the intent of the decedent in performing a certain equivocal physical act, are the decedent's declarations admissible to prove such intent?

2. Is the presumption of regularity applicable in a case where (1) the documents falsely recite that they have been signed at the end thereof, and the signature lines provided at the end have in fact been left completely blank, (2) the only signatures appearing on the documents were placed on the initial pages thereof by the decedent in conjunction with the minor corrections he made on such pages, and (3) the sole issue relates to the decedent's intent, and not to whether the physical formalities of executing a will were properly performed?

3. In a caveat to a purported will instituted prior to probate, did the trial court correctly rule that the burden of proving every element of due execution is on the proponent of the purported will?

4. After verdict in a will contest between two documents offered for probate, where one of the documents is admitted to probate as the decedent's Last Will and Testament, and where the executrix named therein is duly appointed, is the proponent of the defeated document entitled to letters of collection on the decedent's estate?

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BRIEF FOR APPELLEES

COUNTER-STATEMENT OF THE CASE

The Facts

a. Introduction

The decedent, Paul M. Gunzbourg, died on May 30, 1954, a resident of the District of Columbia.

The decedent's will dated February 1952 has been admitted to probate and record. Appellee Catherine Gunzbourg-Gurney has been duly appointed as executrix thereunder, and the decedent's estate is being administered thereunder (J.A. 60-61).

Appellee Catherine Gunzbourg-Gurney, the duly appointed executrix of the decedent's estate, was the decedent's sister-in-law; she is the widow of the decedent's predeceased brother Jules (J.A. 85).

Appellee Maxim J. Gurney is the only child of appellee Catherine Gunzbourg-Gurney and of the decedent's predeceased brother Jules; he is the decedent's sole heir and next-of-kin (J.A. 85-86).

b. Character of the Decedent

The decedent was a professional engineer. Before coming to the United States, he was an executive of the Siemen's Company, a large European manufacturer of electrical equipment. Beginning in 1926, he was chief engineer and subsequently "second in command" at the Brussels, Belgium office of Siemen's. Thereafter he was placed in charge of the Siemen's branch in Paris (J.A. 89).

The decedent moved to the District of Columbia from New York in 1952. He joined the Air Information Service of the Library of Congress as a professional engineer and was placed in charge of a technical unit at a GS-13 grade (J.A. 90, 95).

c. Prior Wills Executed by the Decedent

The decedent's will dated February 1952 was offered for probate by appellee Catherine Gunzbourg-Gurney; its execution was sustained by a directed verdict of the Court below (J.A. 66), and it has been admitted to probate and record as the decedent's Last Will and Testament (J.A. 60). Two other wills executed by the decedent also were admitted into evidence in the proceedings below: wills dated February 11, 1943 and June 8, 1951 (J.A. 96). All three of these wills were executed by the decedent in the customary way, that is, by signing his full name on the original or ribbon copy on the line provided for the signature at the end (J.A. 114, 120, 125). The two latest wills, those of 1951 and 1952, are sealed with a wax seal alongside the signature at the end. (J.A. 120, 125).

d. The Documents Offered for Probate by Appellant

The documents offered by appellant as the decedent's will consisted of three typewritten copies: an original or ribbon copy, and two carbon copies.

The documents offered by appellant are not dated, but they contain the year "1953" in the text of the final paragraph (J. A. 131, 135, 139).

The typed final paragraph of each of these documents, including the blank signature line at the end thereof, reads as follows:

> "In witness hereof, I have hereunto set my hand and seal this _____ day of _____ _____, 1953.
>
> _____ (L. S.)
> PAUL M. GUNZBOURG"

The attestation clause contains a similar recitation:

> "The foregoing instrument, consisting of four (4) typewritten pages, was signed and sealed at the end thereof. . . ." (emphasis added)

Contrary to the foregoing recitals, the decedent did not sign any of the three copies at the end. The signature lines at the end of each were kept blank (J. A. 131, 135, 139).

The decedent made minor corrections in the text of the first and the second pages of the carbon copies. He refrained from making the identical corrections on the first and second pages of the original copy. The corrections made on the carbon copies by the decedent were as follows: on the first page he corrected the spelling of a legatee's name from "Paduh" to "Pahud"; and on the second page, he inserted the words "in Leningrad and" prior to the words "in the Caucasus." The decedent placed his signatures in the margins of the first and second pages of the carbons where he made the foregoing corrections (J. A. 132, 133, 136, 137). Appellees have stipulated that the signatures are genuine (J. A. 82, 83).

The decedent did not make any corrections on page 3 of either carbon, and he did not place his signatures on page 3 of either carbon (J. A. 134, 138).

The decedent did not make any corrections on page 4 (the final page) of either carbon, and he did not place his signatures on page 4 of either carbon (J. A. 135, 139).

The decedent made no corrections whatsoever on the original or ribbon copy, and he did not place his signatures on any of the pages of the original or ribbon copy (J. A. 128A, 129, 130, 131).

The decedent made the corrections in September 1953, shortly after he had received the documents from appellant in New York. The decedent stated he was making corrections and signing them (J. A. 73, 76, 78).[1] In the ensuing months, he requested his housekeeper on several occasions to remind him to sign his will on the following day, but the housekeeper never did so (J. A. 74-75). Within a month of his death and long after the witnesses had signed, he reiterated to two of his close friends that he would sign his will tomorrow--that he was not quite decided yet and wanted to think it over (J. A. 91, 94).

e. The Narrow Issue in Controversy

Under the general question of due execution, the issue in controversy between the parties in the trial below, was a narrow one -- Did the decedent intend any of the marginal signatures on the corrected first and second pages of the carbons to effectuate his will, or did he intend and contemplate that a further signing by him was necessary to effectuate the documents as a Last Will and Testament?

A three-day jury trial was held before the Honorable David A. Pine on June 24, 25, and 26, 1957. On June 24, the due execution of the will dated February 1952, which appellee Catherine Gunzbourg-Gurney

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1 The statement on page 11 of Appellant's brief that the documents were executed in February 1954 is utterly without foundation.

offered for probate, was established by a directed verdict (J. A. 66). After the introduction of considerable additional testimony and documentary evidence, the jury, on June 26, 1957, found that the documents offered for probate by appellant were not duly executed (J. A. 107).

After verdict, appellant, on July 5, 1957, filed a "Motion to Set Aside Verdict of the Jury and for Judgment".

Still later, on July 9, 1957, appellant petitioned to have letters of collection on the decedent's estate granted to himself (J. A. 61-63). The "Motion to Set Aside Verdict of the Jury and for Judgment" was denied on July 15, 1957. The decedent's will dated February 1952 was admitted to probate and appellee Catherine Gunzbourg-Gurney was granted letters testamentary thereunder by the order and decree of the Probate Court dated July 19, 1957 (J. A. 60-61). Appellant's petition for letters of collection also was denied on July 19, 1957 (J. A. 64-65).

STATUTES INVOLVED

D. C. Code (1951 ed.) Sec. 20-401:

"Letters ad colligendum.

Letters ad colligendum may be granted to one or more persons in case of a contest in relation to a will, or the absence of the executor from the District, or his delay in qualifying, or for other sufficient cause, ..."

D. C. Code (1951 ed.) Sec. 20-404:

"When powers to cease.

On the granting of letters testamentary or of administration the power of any such collector shall cease, ..."

SUMMARY OF ARGUMENT

The narrow issue tried below was whether the decedent intended any of the signatures he placed on the corrected first and second pages of the carbon copies to effectuate the document as a Last Will and Testament, or whether he intended that a further signing of the documents by him was necessary to effectuate a Last Will and Testament. There was no issue as to genuineness of the signatures; it was stipulated that the signatures on the corrected pages are the decedent's.

* * * * * *

1. Where the issue in controversy involves a decedent's intention with regard to an equivocal physical act performed by him, his declarations are admissible in evidence to prove the intention. This rule is applied in a wide variety of situations, including the closely analogous cases involving revocation of wills, where a decedent has physically destroyed his will and the issue is whether or not the physical act was intended as a revocation. Cases holding that a decedent's declarations are not admissible to prove whether or not he performed the physical action are inapplicable, for the decedent's declarations in the present case were offered only to prove his intent, and not to prove whether or not he performed the act.

2. Where a document is not regular on its face, but on the contrary is strikingly irregular, suspicious and self-contradictory on its face as to the facts of execution, no presumption of regularity arises that the document was properly executed as a will. In addition, the presumption of regularity relates to the proof of whether the formalities were properly performed, and not to the proof of a decedent's intent.

3. In a caveat brought prior to probate, the burden of proving every element of due execution is upon the proponent of the alleged will. In the proceeding below, the only element of due execution in

issue was whether or not the decedent intended the signatures on the corrected pages of the carbon copies to be an effectuating signature, and the burden of proof on this issue rested on appellant, the proponent of the document.

4. After verdicts establishing that the February 1952 will was entitled to probate and that appellee Catherine Gunzbourg-Gurney was entitled to letters testamentary, there is no authority under our statutes for appointing the losing party in a will contest as a collector for the estate merely because he may eventually appeal from the verdict and judgment of the Probate Court.

ARGUMENT

I. The Trial Court did not Err in Admitting Evidence of the Decedent's Declarations to Mr. and Mrs. Saitzoff--A Decedent's Declarations are Admissible on the Question of his Intent Where the Issue of his Intent is the Relevant Fact.

a. The One Issue at the Trial Was the Decedent's Intent.

Appellees and appellant are in agreement with respect to the substantive rule of law involved in this proceeding. The rule is: Although the District of Columbia statute does not require that a will be signed at the foot or at the end, nevertheless the signature of the decedent, wherever placed, must be signed by the decedent with the intent that such signature would effectuate the will and that no further signing of the will is required. Stated succinctly, the rule is (94 Corpus Juris Secundum, Wills, Sec. 177a, p. 979):

> "It is essential, however, that the signature, whatever its local position, must have been made with the design of authenticating the instrument and that the testator should have contemplated no further signing."

The decedent made minor corrections on the first and second pages of the carbon copies and placed his signatures on those pages. He refrained from making the identical corrections on first and second pages of the original copy and he did not sign any of the pages of the original copy. He did not sign any of the pages of the carbons on which he made no corrections, and he did not place his signature on any of the copies on the line provided therefor at the end of the text.

Appellees have stipulated that the signatures on the corrected pages of the carbons are genuine.

Accordingly, the narrow substantive question of law is: Did the decedent intend any of his signatures on the corrected pages of the carbon copies to be the final solemn act which would effectuate any of the three documents as a will or did he intend that a further signing of the document by him was required in order to effectuate the instrument as a Last Will and Testament?

b. Evidence of Decedent's Intent

Appellant's key witness, Madame Pahud, admitted on cross-examination that she was present when the decedent placed the writings on pages 1 and 2 of the carbon copies. This occurred in September 1953, approximately two or three weeks after the decedent received the wills from appellant in New York (J. A. 73).

Madame Pahud also admitted that the decedent told her that he was making corrections and that he had signed them (J. A. 73, 76, 78). Similarly, she admitted that after the day in September when the decedent corrected and signed the carbon copies, he specifically requested her to remind him to sign his will on the following day. She recalled that the decedent asked her to do this on at least two or three occasions but that she never reminded him (J. A. 74-75).

Appellant did not object to the admissibility of the foregoing evidence of the decedent's intent. Appellant, however, did object to the testimony of witnesses Alexander Saitzoff and Natalie Saitzoff.

Alexander Saitzoff is an engineer employed by the International Bank for Reconstruction and Development (J. A. 88). He had been well acquainted with the decedent for approximately 29 years, both as a fellow employee of the Siemen's Company in Europe and as a business associate in the United States (J. A. 88-89). When the decedent moved to Washington, Mr. Saitzoff and his wife remained very close friends and visited the decedent approximately three or four times each month (J. A. 88-90, 93).

Mr. Saitzoff testified that in the course of one of his frequent visits to the decedent, not more than a month before the decedent's death, the subject of the decedent's will arose. Madame Pahud offered to give the decedent his will to sign and the decedent said "No, I will sign it tomorrow" and then added, to the Saitzoffs, "I am not quite decided yet. I want to think it over." (J. A. 91).

Natalie Saitzoff, the wife of Alexander Saitzoff, is employed by the Library of Congress and also was well acquainted with the decedent; in fact she assisted him in obtaining his job at the Library of Congress (J. A. 93, 95). Mrs. Saitzoff corroborated Mr. Saitzoff's testimony concerning the statements of the decedent (J. A. 94).

Appellant objected to the admissibility of the Saitzoffs' testimony on hearsay grounds. The objection was overruled by Judge Pine.

Appellees respectfully submit that the testimony of the decedent's declarations to Mr. and Mrs. Saitzoff was clearly admissible on the issue of the decedent's intention regarding the signatures which he had placed on the corrected first and second pages of the carbon copies.

c. A Decedent's Declarations Are Admissble To Prove His Intent, Where His Intent is A Relevant Issue.

The pivotal point in this proceeding is that there is no dispute between the parties about whether the decedent performed a certain physical act--it is agreed that the decedent placed his signatures on the corrected first and second pages of the carbons and that the signatures are genuine.

However, as pointed out above, the decedent's physical act of making signatures has no legal significance unless he intended the signatures, or any of them, to effectuate the documents, or any of them, as a Last Will and Testament. See 94 C. J. S., Wills Sec. 177a, supra. The only question in issue, therefore, was the existence or non-existence of the requisite intent on the part of the decedent. In other words, the question of the decedent's intent not only was relevant to the controversy, but it was the controversy.

The authorities are quite clear that where the decedent performs a physical act, the legal significance of which depends on his intent with regard thereto, then the declarations of the decedent subsequent to the admitted performance of the physical act are admissible to determine whether or not the requisite intent existed. Some illustrations of this rule of admissibility on the issue of whether the requisite intent existed to infuse jural significance to an admittedly-performed physical act are:

(1) Delivery of a deed. For effective "delivery" of a deed, there must be not only the physical acts of signing and turning over possession of the deed, but also an intent on the grantor's part to divest himself of all interest in the property and to pass title to the grantee, just as the "execution" of a will requires not only the physical act of placing a signature on the document, but also the intent that the signature effectuate the document as a will.

In Kelly v. Bank of America Nat. Trust & Savings Ass'n., 112 Cal. App. 2d 388, 246 P. 2d 92 (1952), a father admittedly had signed, acknowledged and turned over a deed to his son, the grantee. In litigation following the father's death, evidence of the declarations made by the decedent after the alleged "delivery" were held admissible to establish the father's lack of intent to convey his interest in the property to the son, thereby defeating the son's claim that there had been valid delivery of the deed. The Court adopted the general rule (112 Cal. App. 2d at p. 394, 246 P. 2d at p. 96):

> "When intent is a material element of a disputed fact, declarations of a decedent made after as well as before an alleged act that indicate the intent with which he performed the act are admissible in evidence as an exception to the hearsay rule, and it is immaterial that such declarations are self-serving."

To the same effect, Dinneen v. Younger, 57 Cal. App. 2d 200, 134 P. 2d 323 (1943); Troseth v. Troseth, 224 Minn. 35, 28 N. W. 2d 65 (1947); Mower v. Mower, 64 Utah 260, 228 P. 911 (1924).

(2) Conveyance of naked legal title or full equitable ownership. The physical acts of endorsement and transfer of stock or securities are also equivocal acts. They may be effective to convey naked legal title only or full equitable ownership, depending on the intention of the parties. In Hansen v. Bear Film Company, Inc., 28 Cal. 2d 154, 168 P. 2d 946 (1946), a son performed the physical act of endorsing and transferring stock certificates to his mother. After the son's death, in an action brought by his heir to recover the stock, the issue was whether the endorsement and transfer to the mother were intended merely to place the legal title in the mother's name, or whether the acts were intended to vest full equitable ownership in the mother. The Court applied the rule set forth in this section of the brief and held that evidence of the decedent's declarations subsequent to his acts of endorsement and transfer were admissible as proof of the decedent's intention to convey only bare legal title and not full equitable ownership.

(3) Conveyance of present interest in a survivorship bank account. In Hudson City Savings Bank v. Havemeyer, 139 N. J. E. 435, 50 A. 2d 831 (1947), the issue was whether the survivor or the estate of the deceased original depositor was entitled to the balance in a survivorship savings account. It was not disputed that the decedent had signed the survivorship account signature card. But as a matter of substantive law, this signing was merely an equivocal act without legal significance unless the decedent had intended to give the survivor a present interest in the account. The Court held that the refusal to admit the decedent's declarations tending to show absence of donative intent was error.

(4) Miscellaneous.

The same rule is approved in 2 Page, Wills (Lifetime ed. 1941) Sec. 760, p. 436:

> "The issue may be one in which the actual intention of the testator, or his state of mind, or his feelings, and the like, is material; and the declarations may be offered to prove testator's actual intention, state of mind, feelings and the like. For this purpose, such declarations are frequently the best evidence which can be offered; or, at least, that form of evidence which must be taken into consideration if it is sought to arrive at the truth. In cases of this sort, such declarations are generally held admissible."

In Foster v. Winingham, 169 F. 2d 46, 48-49 (10th Cir. 1948), the rule is stated as follows:

> "But the admissibility of the letter in evidence is challenged. The argument is that it was hearsay, a mere conclusion, a self-serving declaration, and not binding on the wife. Ordinarily writings or unsworn declarations which are no part of the res gestae are not admissible in evidence. But where the existence of a particular intent of a person at a certain time and in connection with a certain incident or transaction becomes a distinct and material fact to be proved in a chain of circumstances, words spoken or written by such person which have a bearing upon that intent are admissible. They are not admissible for the purpose of

establishing the substantive fact that the person acted or failed to act. They are admissible only for the purpose of throwing light upon the question of his intent in acting or failing to act."

* * * * *

(5) Revocation of wills. Nowhere is the analogy to the present case closer than in cases involving revocation of wills, and nowhere in the revocation cases is the exposition of this rule more clearly set forth than in Savoy v. Savoy, 94 U.S. App. D.C. 411, 220 F. 2d 364 (1954).

The substantive law of revocation requires both the performance of a physical act by the testator as well as a specific intent on his part. The mere tearing of a will is not equivalent to the jural act of revocation--just as the mere placing of a signature on a document is not the equivalent of the jural act of executing a will. In the case of revocation, the testator must not only perform the physical act of tearing, but must also intend to revoke his will, just as in the case of the execution the testator must not only place his signature on the document, but also must intend thereby to effectuate the document as a will without any further signing.

In Savoy v. Savoy, the testator had torn his will. So much for his performance of the physical act. The issue in the Savoy case, as here, was the proof of the requisite intent. The lower court excluded evidence of declarations made by the testator about two or three months prior to his death, which tended to show that he believed that his will was still in effect. On appeal, this court held that the exclusion of the decedent's declarations was reversible error--that evidence of the decedent's declarations tending to show his intention with regard to the physical act of tearing was admissible.

As in the Savoy case, appellees in this case did not introduce the evidence to establish that the decedent had performed or had not performed a physical act--in this case it is admitted that the decedent

placed his signatures on the corrected first and second pages of the carbons. The testimony went only to his intention--whether the decedent intended any of the signatures to be the final and solemn act of effectuating a will or whether he intended and contemplated that a further signing of the documents was necessary in order to effectuate his will. The reference in the Savoy opinion to 6 Wigmore, Evidence (3rd ed. 1940) Sec. 1737 is as clearly applicable to the proof of intention where the issue is one of execution as it is where the issue is revocation:

> "***since the question is here merely one of the existence of a state of mind, may we not infer the testator's then state of mind from his state of mind at a prior or subsequent time not too remote? The principle of Relevancy already examined (ante, Secs. 241, 242) certainly justifies this; hence, as evidence of this prior or subsequent state of mind, utterances at the prior or subsequent time are admissible."

Appellees respectfully submit that the rule discussed in the authorities cited above, and particularly the holding and reasoning of Savoy v. Savoy, are controlling here, and that Judge Pine correctly admitted the Saitzoffs' testimony of the decedent's declarations as evidence of the decedent's intent regarding the signatures placed on the corrected first and second pages of the carbon copies.

d. Throckmorton v. Holt is Inapplicable

Under this first issue, appellant relies on Throckmorton v. Holt, 180 U.S. 552, 21 S.Ct.474, 45 L.Ed. 663 (1901).

In the Throckmorton case, the issue was forgery--did the testator sign the will or was his signature forged? The testator was Joseph Holt, for many years the Judge Advocate General of the United States Army. The will was dated February 7, 1873. The attesting witnesses were U.S. Grant, then President of the United States; W. T. Sherman, then Commanding General of the United States Army; and Ellen B. E. Sherman, wife of General Sherman. The testator died in August 1894, and the will was offered for probate in September 1895.

Opponents of the will sought to introduce evidence of the testator's declarations which would support the inference that it was improbable that he would dispose of his estate in the manner set forth in the will, thus leading to the further inference that the will was not genuine and that the testator's signature was a forgery. The narrow question for decision, as limited by the Supreme Court, was (180 U.S. at p. 570):

> "The question is, in other words, Can the contestants prove by unsworn oral declarations and by letters of the deceased facts from which an inference is sought to be drawn that the disposition of the property as made in the paper is improbable, and that the paper was therefore a forgery?"

To repeat: the issue was forgery--the fact to be established was whether the testator had performed the physical act of placing his signature on the will. In other words: the fact to be proved in the Throckmorton case--the performance of a physical act-- is a fact on which in the present case there is no dispute; conversely, the fact to be proved in the present case--the intent of the decedent with respect to the signatures which he admittedly placed on the corrected first and second pages of the carbon copies--was not in issue in the Throckmorton case. The Throckmorton case held only that the testator's declarations were inadmissible to prove whether or not he had performed the physical act; the case does not deal with the question before this Court--the admissibility of a decedent's declarations to prove his intentions regarding a physical act which he concededly performed.

The distinction between proving the performance of a physical act, on the one hand, and proving the intention regarding such act, on the other, and the different rules of admissibility applicable to the two situations, are clearly pointed out in Savoy v. Savoy, supra (94 U.S. App. D.C. at p. 413, 220 F. 2d at p. 366):

> "It is contended the proffered testimony was incompetent because hearsay and therefore properly excluded even though relevant. We think it was not hearsay. The issue was the intent or state of mind of the testator when the will was torn. As we have said, the statement attributed to him, in and of itself, tended to show this. The witness whose testimony was offered to prove the testator's statement was under oath and subject to cross-examination. If his statement to her was itself evidence of his intent then her narration of the statement on the witness stand would not have been hearsay but direct testimony of a relevant circumstance bearing upon intent. In contrast, if the proffered testimony had been that he told the witness he had not torn the will this would have been hearsay as to whether he did or did not tear it." (Emphasis added)

Appellees submit that Throckmorton v. Holt is clearly inapplicable in this case, and that the rule discussed in this section relating to proof of intent regarding an equivocal physical act is controlling. Under this rule, Judge Pine was clearly correct in admitting the testimony of the Saitzoffs.

II. The Trial Court did not Err in Denying Appellant's Requested Instruction No. 3--There is no Presumption that the Decedent's Signatures on the Corrected First and Second Pages of the Carbon Copies were Placed there with Intent to Effectuate his Will.

Appellant's second claim is that Judge Pine committed reversible error in denying appellant's requested instruction No. 3 (appellant's brief, pp. 19-23). This instruction requested Judge Pine to instruct the jury that the mere appearance of the decedent's signatures on the corrected first and second pages of the carbon copies, in and of themselves, established a prima facie case that the decedent intended the signatures to effectuate the document as his will and that he did not intend that a further signing would be necessary (J. A. 59). Appellant relies, under this issue, on the presumption of regularity discussed and applied in Betts v. Lonas, 84 U. S. App. D. C. 206, 172 F. 2d 759 (1948).

* * * * *

From the standpoint both of the facts as well as the narrow issue involved in this controversy, it is difficult to conceive of a case to which the presumption of regularity could be less applicable. Betts v. Lonas involved only the issue of compliance with one of the formalities of execution: who signed first, the testator or the witnesses? The will contained an attestation clause and in every respect was regular on its face. The Court held, under these circumstances, that a presumption arose that the requisite formality had been complied with--i.e., that the testator did sign before the witnesses. This presumption of regularity is, in substance, a presumption which arises from a document, regular on its face, to the effect that the necessary formalities had been properly performed.

Such a presumption unquestionably is salutary. In effect, it aids in the probate of an otherwise normally-appearing will where the witnesses are dead or their memories dim--it aids by presuming that the recitation of formalities is true. Thus, even if the attesting witnesses are dead, the will can be saved by the recited facts to which they attested.

Appellees have no quarrel with this rule. It is, however, utterly inapplicable in this proceeding:

First: The documents offered for probate by Corrao are not regular on their face. On the contrary, they are, on their face and in their origin, strikingly irregular.

The original or ribbon copy of the documents was signed by the three witnesses, but was never signed, at any place, by the decedent.

The two carbons have the decedent's signatures on pages 1 and 2, where the decedent made the corrections in September 1953. The decedent's signatures do not appear on the third or the fourth pages where the decedent made no corrections, nor do his signatures appear on the signature line at the end of the will, notwithstanding the recitations to the contrary in the text and in the attestation clause.

All of the foregoing appears on the face of the documents offered by appellant.

The origin and significance of the decedent's signatures on the first and second pages of the carbons, of the decedent's failure to sign the third or fourth pages of the carbons, of his failure to place his signature on any of the pages of the original or ribbon copy, and of his failure to sign at the end of any of the three documents, are established by the testimony.

Madame Pahud, appellant's key witness, admitted that the decedent placed his signatures on the first and second pages of the carbon copies in September 1953 because he was making the corrections which appear on those pages. We need not speculate as to motive: the decedent told her that he was making corrections. The decedent refrained from placing his signature on the pages of the original of the document and on the third and fourth pages of the carbons, because he had no reason to: he had made no corrections on those pages.

Madame Pahud's admissions also establish that the decedent obviously knew that the documents had not been effectuated as a will by the signatures on the corrected first and second pages of the carbons--she conceded that on at least two or three occasions after September 1953 the decedent requested her to remind him to sign his will.

Mr. Saitzoff testified that within a month of the decedent's death, and long after the witnesses signed, the testator stated that he would sign the will "tomorrow"--that he still wanted to think about it. Mr. Saitzoff's wife, Natalie, specifically corroborated her husband's testimony.

And finally, of course, all three documents contain an attestation clause which recited (J. A. 131, 135, 139):

"the foregoing instrument ... was signed and sealed at the end thereof ... by the above-named testator."

This recitation is patently false and is contradicted by the very face of the documents.

On the basis of the foregoing, appellees submit that the presumption of regularity is absolutely inapplicable in this proceeding for the threshhold reason that the presumption presupposes for its application a document which is regular and unsuspicious on its face, whereas the documents offered by Corrao are extraordinarily irregular and self-contradicting on their face.

Second: Appellant's reliance on Betts v. Lonas also misses the mark in that Betts v. Lonas quite properly applies the presumption of regularity to proof of the formalities of execution. In other words, Betts v. Lonas involved a will which on its face appeared to have been executed in the customary, normal every-day method of executing wills, contracts or other solemn documents. The issue--who signed first?--was a question which could not be answered one way or the other from the regular appearance of the document itself. The same type of situation would arise if the issue had been--Did the witness sign in the presence of the testator? etc. The presumption, as correctly applied in Betts v. Lonas, merely aids in establishing that the formalities were properly performed where everything appears in order. In the present case we are not concerned with the performance of the physical formalities of execution--on the contrary, the formalities of execution were not in controversy. The present case involves only the issue of intent, and on this issue of intent the presumption of regularity is inapplicable, for all the rule says, in effect, "This instrument appears on its face to be proper and regular and customary, and it will be presumed that the formalities performed in creating its appearance were performed in the required manner."

* * * * *

The claim in appellant's instruction No. 3 that the signatures on the corrected first and second pages of the carbon copies carry with them, on the facts of this case, the presumption that they were placed there with the intent to effectuate a will and that the decedent did not intend that a further signing was necessary, is also squarely in conflict with the rule set forth by Page (2 Page, Wills (Lifetime ed. 1941) Sec. 755, pp. 462-463):

> "If testator's name is signed by testator at the end of the will, there is a presumption that it is intended as a signature; but if the name appears at some other part of the will, no such presumption arises." (Emphasis added)

Appellees respectfully submit that the presumption of regularity applied in Betts v. Lonas is totally inapplicable in the proceeding because appellant's documents are not regular on their face; because Betts v. Lonas and the presumption of regularity do not concern themselves with the proof of intent, but only with the proof of the proper performance of physical formalities; and because there is no presumption that the signatures placed in the margins in conjunction with the corrections were intended to effectuate the documents as a Last Will. Appellees submit that Judge Pine did not err in denying appellant's requested instruction No. 3.

III. The Trial Court did not Err in Denying Appellant's Requested Instruction No. 5. --In a Caveat Prior to Probate, the Burden of Proving Every Element of Due Execution is on the Proponent of a Purported Will.

Appellant's third claim is that Judge Pine committed reversible error in denying appellant's requested instruction No. 5 (appellant's brief, pp. 23-25). This instruction requested Judge Pine to charge the jury that appellees had the burden of proving that the decedent's signatures on the corrected pages 1 and 2 of the carbon copies were not placed there with the intent to effectuate a will and that the decedent intended and contemplated that a further signing of the document was necessary

to effectuate the instrument as a Last Will and Testament (J. A. 59). In other words, appellant sought to place upon appellees the burden of proof on the only element of due execution in controversy.

In the portion of the trial below relating to the document offered for probate by appellant, the appellant, of course, was the proponent of the document and the appellees were the caveators. The proceeding was a caveat prior to probate.

Appellees submit that Judge Pine did not err in refusing the requested instruction. This extraordinary instruction is absolutely contrary to law, is unsupported by any authority, and is wholly without merit.

The universal rule is that the proponent of a purported will has the burden of proving every element of due execution in a pre-probate caveat:

> "The burden of proving that a will was executed in compliance with law rests upon the parties who propound such will for probate; and they are bound to prove each fact which is necessary to make the will valid." (2 Page, Wills (Lifetime ed. 1941) Sec. 750, pp. 448-449) (Emphasis added)

Appellant's requested instruction was directly contrary to this rule and its rejection by Judge Pine was obviously correct.

* * * * *

Appellant's reliance on Betts v. Lonas, supra, on this issue is incomprehensible. The only issue in Betts v. Lonas was whether there had been compliance with one of the formal ingredients of execution -- the proper order of signing. The decision was that the proof of the proper order of signing was aided by the presumption of regularity arising from the regular appearance of the document on its face. Betts v. Lonas did not hold that a proponent of an alleged will does not have the burden of proving execution.

IV. The Refusal of the Probate Court to Appoint a Collector was not Reversible Error

This fourth question presented by appellant is perhaps the most extraordinary of all. Succinctly stated, appellant contends that the Probate Court committed reversible error in refusing to appoint appellant as the collector for the decedent's estate. Appellant relies on the first twenty-one words of D.C. Code (1951 ed.) Sec. 20-401, and upon one of the sentences in Estate of Caroline Easton, 23 Wash. Law Reporter 789 (1895).

The pivotal fact under this issue, of course, is that appellant waited until after the verdict of the jury against his alleged will to file his petition for letters of collection.

Among other things, appellant's claim overlooks the following:

(1) When appellant belatedly decided to move for his own appointment as collector, the jury's verdict had already established that the February 1952 will, with appellee Catherine Gunzbourg-Gurney as executrix, was entitled to probate.

(2) Collectorships are narrowly limited by our statutes. The provisions of D.C. Code (1951 ed.)Sec. 20-404 (not referred to in appellant's brief) unequivocally specify that the power of a collector shall cease upon the granting of letters testamentary.

(3) The case of Estate of Caroline Easton involved a situation in which there was no will; the only issue was--Who shall be the administrator? The ruling of the Orphans' Court was that all of the candidates for letters of administration, including the purported principal creditor, had disqualified themselves by renunciation.

It is respectfully submitted that appellant's claim, viewed in the kindest of light, is wholly devoid of merit.

* * * *

An examination of the Petition for Letters of Collection filed by appellant is quite instructive. This petition was filed on July 9, 1957, less than two weeks after the jury's verdict was returned. Nevertheless, the petition failed to disclose the key fact that the will contest had gone to verdict and was concluded. The last sentence of paragraph 1 of the petition purports to set forth the status of the proceedings--yet it makes no reference whatever to the three-day jury trial and verdict:

> "Thereafter, there were filed amended petitions, caveats and answers, and there were also further proceedings." (Emphasis added) (J. A. 61-62)

Obviously some misunderstanding may exist regarding the purpose and function of a collectorship under our statute. It is respectfully suggested that a collectorship is not intended to function as a consolation prize to be awarded to the loser in a contest between two wills.

CONCLUSION

The orders and decree appealed from should be affirmed with costs against appellant.

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January 27, 1958

APPELLEES' MEMORANDUM IN RESPONSE TO
APPELLANT'S REPLY BRIEF

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the
District of Columbia Circuit
FILED MAR 24 1958
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No. 14,177

EUGENE CORRAO,

Appellant,

v.

CATHERINE GUNZBOURG-GURNEY,
Executrix under the Will of
Paul M. Gunzbourg, deceased,
and
MAXIM J. GURNEY,

Appellees.

APPEAL FROM ORDERS AND DECREE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA HOLDING A PROBATE COURT

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UNITED STATES COURT OF APPEALS

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APPELLEES' MEMORANDUM IN RESPONSE TO APPELLANT'S REPLY BRIEF

INTRODUCTION

Appellees file this memorandum pursuant to leave granted by this Court at oral argument on March 21, 1958.

CITATIONS IN APPELLANT'S REPLY BRIEF

The limited purpose of this memorandum is to comment on the citations in appellant's reply brief.

Before discussing the citations individually, one defect which

they all have in common should be made quite clear as a preliminary matter: none of these citations has anything whatsoever to do with the issue involved in this case, namely: Are the decedent's declarations admissible to establish whether he intended the marginal markings on the corrected first and second pages of the carbon copies to effectuate the documents as a will or whether he intended that a further signing of the documents by him was necessary to effectuate and solemnize them as his Last Will and Testament.

(1) The Law of New York.

Appellant contends (p. 9) that no evidentiary weight should be given to the manner in which the decedent executed his earlier wills because the latter were executed in New York, which requires that a will be signed at the end.

This argument proves a bit too much. The statute in question is New York Decedent Estate Law sec. 21, the full text of which appellees request the Court to notice judicially. Section 21 does not require that a decedent sign his first and last names in full, with middle initial. Nor does sec. 21 require that a decedent affix a wax seal at the end in order to make a validly executed will. On the contrary, the writing of his name in full, and the affixing of a wax seal, are voluntary personalized acts which clearly evidence the manner in which the decedent acted when he intended to solemnize a will.

(2) Savoy v. Savoy.

Appellant totally misconceives the relationship of Savoy v. Savoy, 94 U.S. App. D.C. 411, 220 F. 2d 364 (1954) to the decedent's declarations to the Saitzoffs. The testimony of Alexander and Natalie Saitzoff was not introduced to establish that the decedent did not make the marginal marks or signatures on the corrected pages of the carbons. On the contrary, that is freely conceded. The testimony of the Saitzoffs was introduced only to establish that the decedent intended that a further signing by him was necessary to solemnize a Last Will and Testament,

and that he did not intend the marginal signatures on the corrected carbons to be the solemn and effectuating act of making the documents, or any of them, a Last Will and Testament.

(3) Mahan v. Perkins.

At page 5, appellant quotes from Mahan v. Perkins, 274 Mass. 176, 174 N.E. 275 (1931). The Mahan case is simply another Throckmorton v. Holt, as this Court recognized by coupling and distinguishing both in Savoy v. Savoy. In Mahan, as in Throckmorton, the issue was forgery, and in both cases the decedent's alleged declarations of affection for certain individuals were held inadmissible where the fact to be proved was whether or not the signature on the will was that of the decedent. The discussion of Throckmorton v. Holt in appellees' brief (pp. 14-16) is equally applicable to Mahan v. Perkins.[1]

(4) The Parol Evidence Rule Cases.

In even the wildest exercise of the imagination there is no room in this case for the parol evidence rule. The parol evidence rule has absolutely nothing whatever to do with the hearsay rule of evidence. On the contrary, it is a rule of law which relates to the use of "extrinsic" evidence to construe or vary the terms of a writing.

Nevertheless, on pages 6 and 7, appellant quotes from a series of cases which do not relate to the questions presented on appeal and which are concerned only with the parol evidence rule: In re Kennedy's Estate, 159 Mich. 548, 124 N.W. 516 (1910); Heaston v. Krieg, 167 Ind. 101, 77 N.E. 805 (1906); Brown v. Avery, 63 Fla. 355, 377, 58 So. 34, 41 (1912); and Thompson Will, 375 Pa. 193, 100 A. 2d 69 (1953).

These parol evidence cases do not deal with the question of whether the hearsay rule of evidence does or does not permit the ad-

[1] The Mahan case does differ from Throckmorton v. Holt in one aspect which, although very interesting, is not relevant here. Unlike Throckmorton, the forgery in the Mahan case was well established by testimony of experts on handwriting and paper watermarks, and it was the proponent who sought to use the declarations of affection to establish that the document was in fact signed by the decedent.

missibility of the decedent's declarations to establish his intention regarding an equivocal physical act. On the contrary, they deal exclusively with whether or not extrinsic evidence (evidence beyond the "four corners of the document") is admissible to construe a given document as a will, rather than as a letter or as a contract or as a deed or as something else not amounting to a revocable testamentary disposition.[2]

(5) Peters v. Peters.

On pages 8 and 9, appellant quotes from Peters v. Peters, 64 App. D.C. 331, 78 F. 2d 215 (1935). This case does not raise the issue of whether a decedent's declarations are admissible to establish his intent regarding an equivocal physical act admittedly performed by him. On the contrary, it involves the same evidentiary problem as Throckmorton v. Holt -- Are the decedent's declarations admissible to prove the performance of the act itself, where only the performance or non-performance of the act are in issue? The issue in Peters was whether the witnesses signed in the decedent's presence:

> "the only issue at the trial was whether the testator was present when the attesting witnesses signed."
>
> * * * * * * *
>
> "We have, therefore, here a case in which one of the witnesses testifies under oath to all the circumstances required for the admission of the will to probate. The other repudiates the attestation clause and denies that the testator was present when the witnesses signed; and this question of fact the jury decided in favor of the validity of the will." (64 App. D.C. 332, 78 F. 2d 216)

---

2 Even the parol evidence rule is quite different than appellant's version. The rule freely permits the use of extrinsic evidence to resolve ambiguities. The last sentence of the excerpt from the Thompson case (p. 7 of reply brief) sets forth the correct rule:

> "Where, however, such intent is doubtful or equivocal, extrinsic evidence is admissible."

Likewise, it is clear in this jurisdiction that the parol evidence rule does not prohibit the use of extrinsic evidence to establish a decedent's intent, where the intent itself is the vital element to be proved in order to give legal significance to a document admittedly signed by the decedent. See Issue I in Murray v. Gadsden, 91 U.S. App. D.C. 38, 197 F. 2d 195 (1952).

This Court, following the Throckmorton case, held that the decedent's declarations, made some 14 years later, were inadmissible to prove the physical fact of the decedent's absence when the witnesses signed.[3]

(6) Rood on Wills, sec. 282.

Appellant quotes, at page 8, from sec. 282 of Rood on Wills. This quotation is a segment of a sentence in Rood, Wills (2nd ed. 1926) sec. 282. Because it is not clear from appellant's excerpt, appellees respectfully call the Court's attention to the fact that sec. 282 of Rood's work has absolutely nothing to do with the proof of the decedent's intent, or with anything else relating in any way to the decedent. On the contrary, the section is entitled "Sec. 282. Whether Signing Includes Attesting.", and the entire text thereof deals exclusively with the witnesses and the meaning of the word "attest." There is no issue in this case relating to the conduct of the witnesses. The issue in this appeal relates only to the decedent and the admissibility of his declarations to establish his intent regarding the marginal signatures on the corrected pages of the carbons.[4]

---

[3] The Peters case is instructive on the presumption of regularity arising from the completeness of the instrument and of the attestation clause. In this respect it is the progenitor of Betts v. Lonas, 84 U.S. App. D.C. 206, 172 F. 2d 759 (1948), which is cited in appellant's opening brief.

The Peters will was complete on its face and contained an attestation clause which was complete and free from suspicion on its face, rather than patently false on its face, as in the case of the documents offered for probate by appellant.

The Peters attestation clause recited compliance with the very statutory formality in issue. The issue was whether the witnesses signed in the decedent's presence; the attestation clause recited that the witnesses did sign in the decedent's presence. This Court held that the attestation clause was prima facie evidence of the truth of the matter it recited.

As in the case of Betts v. Lonas, it may be conceded, arguendo, that an attestation clause, regular, complete and unsuspicious on its face, should be prima facie evidence of the performance of the formalities recited within the clause. But, as pointed out in appellees' brief (pp. 16-20), there is no room in this case for the application of the presumption of regularity for at least two reasons: (1) the attestation clause in the documents offered for probate by appellant is false on its face, and (2) the presumption of regularity pertains to the proof of matters which are not in issue in this case, namely, the formal acts recited in the attestation clause. In this case the only issue is the intent with which the decedent regarded the marginal signatures he placed on the corrected pages of the carbon copies.

[4] The Court's attention further is respectfully called to the fact that the Thomas case (reply brief, p. 8) correctly utilizes the Rood quotation (in more complete form) in connection with the issue to which the quotation is pertinent -- Was the will attested by the witnesses?

SUMMARY

The substantive question of fact in this litigation is:

> Did the decedent intend any of his signatures on the corrected pages of the carbon copies to be the final solemn act which would effectuate any of the three documents as a will or did he intend that a further signing of the document by him was required in order to effectuate the instrument as a Last Will and Testament?

The question of law to be decided in connection with the proof of the above factual question is:

> Where the single question of fact is the intent of the decedent with respect to an ambiguous act which he performed, are his declarations admissible to prove such intent?

We are concerned with typewritten documents which are incomplete on their face. The decedent made insignificant corrections on the first and second pages of the carbon copies, and placed his signatures on the corrected pages. He did not place his signatures on any page which did not have a correction, he refrained from making the identical corrections on the original or ribbon copy, he did not place his signature anywhere on the original copy, and he refrained from signing the documents at the end on the line provided for his signature.

Thereafter, over the course of the succeeding eight months, he consistently declared that he intended to sign the document in the future.

These declarations are proof of his intent regarding the marginal signatures on the corrected pages of the carbons. They establish that he did not intend the marginal signatures to be the final and solemn act of effectuating the documents as a will, and that he intended and contemplated that a further signing by him was necessary in order to complete and solemnize them as a Last Will and Testament.

The decedent's declarations are admissible to prove his intent regarding the marginal signatures on the carbon copies, under the well

established exception to the hearsay rule of evidence discussed at length in appellees' opening brief (pp. 7-16). Appellant has produced no authority to the contrary. Appellees submit that Judge Pine did not err in admitting the testimony of Alexander and Natalie Saitzoff.

Appellees further submit that Judge Pine did not err in any other manner alleged by appellant's appeal.

CONCLUSION

The orders and decree appealed from should be affirmed with costs against appellant.

Respectfully submitted,

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March 24, 1958

REPLY BRIEF FOR APPELLANT

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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For the
District of Columbia Circuit
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Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES COURT OF APPEALS

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REPLY BRIEF FOR APPELLANT

REPLY TO APPELLEES' CONTENTION THAT EXTRINSIC EVIDENCE MAY BE INTRODUCED TO SHOW INTENT OF TESTATOR IN EXECUTION OF A WILL

The laws of the District of Columbia with respect to the execution of wills establishes rigid formalities. When those formalities have been carried out in the execution of a will a presumption of law arises that the will has been executed in accordance with law. All the formalities respecting the execution of wills are present in the case at bar.

The formalities, and their application and significance to the case at bar are fully analyzed and discussed in appellant's brief beginning at page 19. This reply brief will not impinge upon the time of this Honorable Court to repeat what is there set out. On the contrary, this brief will be devoted to an examination, analysis and discussion of the principle point raised by the appellees' brief.

Appellees main contention is that the oral declarations of a decedent respecting the execution of his will are admissible in evidence to show what his intention was with respect to the execution of the will. Appellant, on the contrary, contends that where a will shows on its face compliance with the formalities required by the laws of the jurisdiction, the compliance with those formalities gives rise to the presumption of law that the testator intended the instrument to be his will, and that the will cannot be overthrown by allegedly oral declarations made by the decedent months after the execution of the will to the effect that he was going to sign the will tomorrow. As appellant's brief points out,to admit such testimony is to open the doors wide to the possibility to the worst kind of fraud and the likelihood of perjury.

Appellees in contending for their position that oral declarations by a decedent are admissible in evidence to show the decedent's intention rely upon and cite a number of cases, none of which deal with wills (Appellees' Brief, pp. 10-12.). It is respectfully submitted that none of those cases have any bearing upon the case at bar. The execution of wills is rigidly controlled and regulated by statute. Compliance with the requirements of the statute places wills on a different plane than the instruments in question in the cases relied upon and cited by appellees from pages 10 to 12.

Appellees also rely upon and cite Savoy v. Savoy, 94 U.S. App. D.C. 411, 220 F. 2d 364 (1954), a case arising in this jurisdiction, for their contention that oral declarations allegedly made by a decedent many months after the execution of a will are admissible in evidence to show the decedent's intention. Let us examine and analyze the Savoy v. Savoy case.

In the first place the Savoy v. Savoy case is not a case dealing with the execution of a will. Rather on the other hand it is a case dealing with the question whether the decedent in that case had revoked his will by tearing. The will when it was presented for probate had been torn in two pieces and was held together by tape. Decedent's widow testified that the will had become torn in a scuffle between herself and her husband. The couple had been separated for some time, and there were apparently some serious marital difficulties between them. Apparently also, there was evidence that the will became torn under circumstances quite different from those related by the widow. Obviously, the will became torn under ambiguous and equivocal circumstances.

The laws of the District of Columbia provide that a will may be revoked by another will or codicil or by burning, tearing or obliterating by the testator himself or in his presence and by his direction and consent. The widow's testimony tended to show that the tearing of the will was accidental and that she had a part in the tearing. If this version of the testimony was true, the legal conclusion is that there was an absence of intention to revoke. Evidence was offered and overruled by the trial court to the effect that the decedent two or three months before his death requested a friend to intervene with his estranged wife and to take him back. Purportedly, he also told the witness how he had left his property and why. To shed light upon the question of the decedent's intention with respect to the tearing of the will under such ambiguous and equivocal circumstances as were here present, this Honorable Court held that the testimony was not hearsay and should have been admitted.

At the outset let us note carefully that the proffered testimony rejected by the trial court did not relate to the circumstances of how the will came to be torn; but rather to how the decedent had left his property and why. Declarations of the decedent of how and why he had left his property are indicative, as this Honorable Court reasoned, "that the condition of the will was not due to action intended by the husband to bring about a change in his beneficiaries," Savoy v. Savoy, 94 U.S. App.

D.C. 411; 220 F. 2d 364, 366. Continuing, this Honorable Court, in the succeeding paragraph, calls attention that in contrast, "if the proffered testimony had been that he (the decedent) told the witness he had not torn the will, this would have been hearsay as to whether he did or did not tear it." Savoy v. Savoy, 94 U.S. App. D. C. 411, 220 F. 2d 364, 366.

How does the reasoning of this Honorable Court as indicated above apply to the case at bar? The testimony proffered by Mr. Alexander Saitzoff and Mrs. Natalie Saitzoff, his wife, deals with the signing of his will by the decedent, Paul M. Gunzbourg. The proffered testimony denies the existence of a solemn act performed by the decedent, Paul M. Gunzbourg, namely, the due execution of his will. The signature of the decedent, Paul M. Gunzbourg, appears twice on the bottom of pages one and two of the will offered for probate by appellant. Following the proof of the fact that these said signatures were the genuine signatures of the decedent, appellees stipulated and acknowledged the signatures to be the true and genuine signatures of the decedent. Moreover, the decedent, Paul M. Gunzbourg, declared the instrument to be his will before three competent witnesses, and requested them to sign his will as witnesses, and they did so sign his will as witnesses, and they did so in his presence and at his request. Now, the proffered testimony by appellees of Mr. and Mrs. Saitzoff and opposed by appellant would deny that the will had even been executed by the decedent, Paul M. Gunzbourg. Thus, the testimony of Mr. and Mrs. Saitzoff fits squarely within the framework of the rule of the Savoy v. Savoy case where this Honorable Court stated: "In contrast, if the proffered testimony had been that he (the decedent) told the witness he had not torn the will this would have been hearsay as to whether he did or did not tear it." Savoy v. Savoy, 94 U.S. App. D.C. 411, 220 F. 2d. 364, 366.

The Savoy v. Savoy case is a case of limited application. It is not a case opening the doors to the introduction of oral declarations allegedly made by a decedent several weeks or months following the

execution of his will contradicting the solemn act of execution of his will. To do so, as has already been observed, would be to open the doors wide to fraud and to the likelihood of perjury. This Honorable Court has carefully cautioned not to read into the Savoy v. Savoy case more than is there. The Court said: "It is desirable to restate briefly the situation so that our decision will not be thought broader than it is. Savoy v. Savoy, 94 U.S. App. D.C. 411, 220 F. 2d, 364, 366 (Emphasis supplied).

In limiting the application of the rule of the Savoy v. Savoy case, this Honorable Court specifically excluded from the rule cases involving the execution of a will. This Court said: "It is desirable to restate briefly the situation so that our decision will not be thought broader than it is. The case does not involve statements offered to prove the forgery of a will, the principal issue in Throckmorton v. Holt, supra, and see Peters v. Peters, supra, or the fact of its execution, as in Mahan v. Perkins, supra, or the content of the instrument, see 6 Wigmore, Evidence, Section 1736." Savoy v. Savoy, 94 U.S. App. D.C. 411, 220 F. 2d 364, 366. (Emphasis supplied).

This Honorable Court in specifically excluding from the rule of Savoy v. Savoy cases involving the execution of a will referred to and cited Mahan v. Perkins, 274 Mass. 176. In this case involving the oral declarations of a testator respecting the execution of a will the Massachusetts Court said:

> "Declarations of a testator cannot be received to prove the execution of a will.
>
> ** the evidence offered to show her state of mind and indicating her plan, purpose or intent was not admissible." Mahan v. Perkins, 274 Mass. 176.

An instrument containing all the usual and formal characteristics of a will and designated as a "will", containing the genuine signature of the testator, and the genuine signatures of the requisite number of witnesses, and in all other respects was executed in conformity with all the requirements of the statutory law of the jurisdiction, the instrument

itself imports the animus testandi. Oral declarations allegedly made by a decedent many weeks or months after the execution of the will contradicting the fulfillment of any of the formalities required by the statutory law of the jurisdiction are inadmissible.

Re Will of Thomas Kennedy, Deceased, 159 Mich. 548, 28 LRA (NS) 417, at page 422, it is said:

> " ** a writing which in form and substance is testamentary, the writing of itself imports, and conclusively imports, the animus testandi, i. e., the mind to dispose, the firm and advised determination to make a testament., - closing all inquiry as to the existence and manifestation of the intent. "

The Court directed a verdict in favor of the proponents of the will, instructing the jury that the will had been executed in pursuance of the formal requirements of the statute, and that parol testimony that the testator did not intend that the instrument should operate as a will was not receivable.

In Heaston v. Krug, 167 Ind. 101, 27 N.E. 805, 119 Am. St. Rep. 475, at page 484, the court said:

> "As the writing in question contains every element of a valid will and was incapable of operating in any other way, we are of opinion that the animus testandi must be implied, and that the instrument (supposing that it had been legally executed) was not subject to be controlled by parol evidence tending to show any different intent. "

In Brown v. Avery, 63 Fla. 325, 376; 58 So. 34; and Ann. Cases, 1914 A, page 90-97, the court said:

> "We have reached the conclusion that, as a general rule, parol evidence is inadmissible for the purpose of showing that an instrument purporting to be a will fair and regular on its face, properly executed as such was not intended to operate as a will. "

On a rehearing of the above case, the court said:

> "The intent thus expressed and the will thus duly made continue in legal force and effect until the

> testamentary intent is duly shown to have been changed in the manner and by the means required by law."

In Re Norris, 29 ALR 885-890; 211 Mich. 430, the Court said:

> "* * * publication of the will as the Last Will and Testament of the testator coupled with a request that the witnesses sign the attestation clause in which the testator has himself written his own name, establishes, at least prima facie, the intent to adopt such name so written as his signature to the will."

The statute regarding the execution of wills in the District of Columbia does not require the testator's signature at any particular place on the will. In 29 ALR 892, it is said:

> As a general proposition, in the absence, of statute requiring a will to be signed at the 'end', 'foot', or 'close', the writing of testator's name in or upon the instrument is sufficient, if, at the time of the writing or of the publication, there is an intent on testator's part that such writing will complete and authenticate the document as his testamentary act."

In Page on Wills, Lifetime Edition, Sec. 239, Page 486, Note 8, it is said:

> "If a will is in typewriting, and a carbon copy is made, the fact that the testator executed the carbon copy and did not execute the original, does not make the will invalid."

Appeal of James Thompson, 375 Pa. 193; 100 At. 2nd 69, 40 ALR 2nd. 689, the Court said:

> "Where a writing by its terms clearly constitutes a testamentary disposition, evidence of a contrary intent is inadmissible. Conversely, where a writing is obviously not a will, evidence of testamentary intent is not admissible. Where, however, such intent is doubtful or equivocal, extrinsic evidence is admissible."

The Court further said:

> "As the facts are undisputed, the testamentary character of the instrument is a question of law for the court." Kimmel's Estate 278 Pa. 435; 31 ALR 678.
>
> "If the questioned writing is in legal effect a will, understanding of a testator to the contrary is immaterial."

In Thomas Estate, 243, Mich., 566, a will was executed under a statute similar to the District of Columbia statute.

The Court said:

> "Will may be signed anywhere providing there is an intent to adopt the name so written as the signature to the will."

The Court further quoted from 280 Rood on Wills, Section 282, as follows:

> " ** request by testator to witnesses to subscribe necessarily includes in itself an admission to them that the instrument is his, and accepted and approved."

In Peters v. Peters, 64 App. D.C. 331, 78 F. 2d, 215-219, the Court said:

> " ** a will properly executed, containing admittedly genuine signatures both of the testator and witnesses, will be presumed to have been lawfully executed, and that to overcome the presumption, clear and satisfactory proof is necessary. Particularly is this the case where the provisions of the will are reasonable and just provisions of the will, and where there is not evidence of fraud or unfair dealing."

In this case in speaking of oral declarations to annul a will properly executed, the Court said:

> " ** to permit unsworn declarations of this character, for the purpose of annulling a solemn instrument, complete on its face, would be to adopt a dangerous rule and to open wide the door to fraud and perjury. In short, to do more injustice than justice. Here, as we have shown,

> the genuineness of the testator's signature was not denied, nor was the genuineness of the attesting witnesses, and the only question was whether the testator was present when the 2 witnesses signed. To invite the jury to speculate on this issue on the basis of declarations of the deceased made fourteen years after the event, and relating not to the will in question but to another will would be to break down the efficiency of the statutory provision and in the end lead to confusion rather than to the ascertainment of truth. As was held by Mr. Justice Washington in Stevens v. Van-cleve, Fed. Cas. No. 13,412, nothing is more dangerous than to admit the declarations of a deceased prior or subsequent to the execution of a will either to control the construction of the will or to support or destroy its validity; and in approving that rule the Supreme Court in Throckmorton v. Holt, 180 U.S. 552, 573, 21 S. Ct. 474, 482, 45 L. Ed. 663, said: The declarations are purely hearsay, being merely unsworn declarations, and when no part of the res gestae are not within any of the recognized exceptions admitting evidence of that kind. No more is the excluded conversation to which we have referred, in the "recognized exceptions" for, as we have shown, there was here neither proof of suspicious circumstances or evidence of fraud or undue influence, and therefore nothing to make the exception applicable. Lipphard v. Humphrey, 209 U.S. 264, at page 274, 28 S. Ct. 561, 52 L. Ed. 783, 14 Ann. Cas. 872."

On page 2 of their brief appellees invite this Court's attention that on previous wills the decedent signed them at the end thereof. Appellant contends that this fact has no relation to the case at bar for the following reason. First, by virtue of the laws of the District of Columbia relating to the execution of wills there is no requirement that a will be signed at the end thereof, and it has been held in this jurisdiction that appearance of the testator's signature anywhere on the will is sufficient. Second, all the other wills executed by the decedent in the case at bar, Paul M. Gunzbourg, were executed in New York. Under the statutory laws of the state of New York, the appearance of testator's signature at the end thereof is mandatory or the will is utterly void.

On page 8 of their brief, appellees call attention to the testimony of Madame Adrienne Pahud to the effect that in September 1953 the decedent, after informing her that he had made corrections and that he had signed them, requested her on two or three separate occasions to remind him tomorrow to sign his will. So much of what appellees state is factually correct. However, appellees fail to invite this Court's attention to the further testimony of Madame Adrienne Pahud having a direct bearing on this point. Madame Adrienne Pahud also testified that the last time the decedent, Paul M. Gunzbourg, requested her to remind him tomorrow to sign his will was between Christmas and New Years, that is Christmas 1953 and New Year's 1954. (J.A. 75) The will was declared by the decedent, Paul M. Gunzbourg, to be his will before the subscribing witnesses in January and February 1954, and it was in those two months that the subscribing witnesses signed the will at the request of the decedent, and at his request. At no time thereafter did the decedent refer to his will to Madame Adrienne Pahud, at no time thereafter did the decedent request Madame Adrienne Pahud to remind him tomorrow to sign his will.

CONCLUSION

It is respectfully submitted and urged that the orders and decrees of the United States District Court for the District of Columbia appealed from be reversed with costs to the estate.

Respectfully submitted,

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